

VERBATIM ¹

RECORD OF TRIAL ²

(and accompanying papers)

of

MANNING, Bradley E.

(Name: Last, First, Middle Initial)

Headquarters and
Headquarters Company,
United States Army Garrison

(Unit/Command Name)

[REDACTED]

(Social Security Number)

U.S. Army

(Branch of Service)

PFC/E-3

(Rank)

Fort Myer, VA 22211

(Station or Ship)

By

GENERAL

COURT-MARTIAL

Convened by

Commander

(Title of Convening Authority)

UNITED STATES ARMY MILITARY DISTRICT OF WASHINGTON

(Unit/Command of Convening Authority)

Tried at

Fort Meade, MD

(Place or Places of Trial)

on

see below

(Date or Dates of Trial)

Date or Dates of Trial:

23 February 2012, 15-16 March 2012, 24-26 April 2012, 6-8 June 2012, 25 June 2012, 16-19 July 2012, 28-30 August 2012, 2 October 2012, 12 October 2012, 17-18 October 2012, 7-8 November 2012, 27 November - 2 December 2012, 5-7 December 2012, 10-11 December 2012, 8-9 January 2013, 16 January 2013, 26 February - 1 March 2013, 8 March 2013, 10 April 2013, 7-8 May 2013, 21 May 2013, 3-5 June 2013, 10-12 June 2013, 17-18 June 2013, 25-28 June 2013, 1-2 July 2013, 8-10 July 2013, 15 July 2013, 18-19 July 2013, 25-26 July 2013, 28 July - 2 August 2013, 5-9 August 2013, 12-14 August 2013, 16 August 2013, and 19-21 August 2013.

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

² See inside back cover for instructions as to preparation and arrangement.

1 A. If they sent a--I'm sure if I saw the memorandum for
2 request--additional request----

3 Q. Sir, can you please turn to page 8 of tab 8?
4 [The witness did as directed.]

5 A. Yeah, okay.

6 Q. Are you familiar with this document?

7 A. Yeah, I'm familiar.

8 Q. What is this document?

9 A. This is a request from the defense for courier cards.

10 Q. Did you consult with trial counsel on this request?

11 A. Yes.

12 Q. And what was your determination?

13 A. To grant them courier cards.

14 Q. Okay, sir. So now, let's move to the next period of delay
15 from mid-October to mid-November. Sir, what happened after the
16 previous period of delay was near its suspense?

17 A. I would get an additional request for an Article 32 delay.

18 Q. Okay, sir. Can you please turn to pages 1 through 3 of tab
19 9?

20 [The witness did as directed.]

21 A. Okay.

22 Q. Are you familiar with this document?

23 A. This is the follow-on request for delay of Article 32.

1 Q. And who is this document from and to?

2 A. It is from the trial counsel to me.

3 Q. And, sir, what's the date of this document?

4 A. 25 October 2011.

5 Q. Sir, I'd just like to draw your attention to paragraph 2 of

6 this document. Did you consider these updates in making your

7 determination?

8 A. Yes.

9 Q. And, again, what other type of updates were you being

10 provided?

11 A. I was provided weekly updates from defense counsel.

12 Q. And, sir, did the defense--to your recollection, did the

13 defense object to this period of delay?

14 A. Yes.

15 Q. Sir, can you please turn to page 4 of tab 9?

16 [The witness did as directed.]

17 Q. Are you familiar with this document, sir?

18 A. Yes, it's an email from Mr. Coombs to me.

19 Q. And what is this document?

20 A. It's dated the 25th of October. It's his position on the

21 delay request. He maintained his previous position that additional

22 delay should not be excluded and it should be credited to the

23 government.

1 Q. And did you consider this objection in making your
2 determination?

3 A. Yes.

4 Q. What was your determination on the government's request?

5 A. I granted the delay.

6 Q. Can you please turn to page 5 of tab 9?

7 [The witness did as directed.]

8 Q. Are you familiar with this document?

9 A. I am.

10 Q. What is--what's the date of the document, sir?

11 A. The date of the document is the 27th of October; it's my
12 approval of the delay request.

13 Q. And did you provide this approval--or was this document
14 provided to--who was this document provided to?

15 A. The IO, trial counsel, and defense counsel.

16 Q. And what did you consider in making this determination?

17 A. The previous memorandum, the request from trial counsel,
18 defense's objection to it and input to the delay, and the weekly
19 updates I was having with Major Fein.

20 Q. And after receiving--or reviewing the defense's objection,
21 what did you do to make sure that evidence was being turned over to
22 the defense as soon as possible?

1 A. Well, it was a continuing process. We continued to update
2 in the accounting memorandums and anytime that Ashden talked to me at
3 a point--because we were getting information in, the classification
4 authorities received, you know, turned it over to the defense so they
5 could prepare for their Article 32.

6 Q. Yes, sir. So, you did prepare an accounting memorandum for
7 this period of time, to your recollection?

8 A. Yes.

9 Q. Can you please turn to page 6 of tab 9?

10 [The witness did as directed.]

11 Q. Do you recognize this document, Colonel Coffman?

12 A. I do.

13 Q. What is the date of the document?

14 A. 16 November 2011.

15 Q. And what is this document?

16 A. This document is the accounting memorandum that accounts
17 for the delay period of 14 October to the day of this memorandum
18 which is 16 November 2011.

19 Q. And was this memorandum provided to the--who was this
20 memorandum provided to?

21 A. Trial counsel and defense counsel.

22 Q. And, sir, during this time, were you provided updates on
23 the status of this case?

1 A. Yes, weekly.

2 Q. Okay, sir. Can you please turn to page 7 of tab 9--7 and 8
3 of tab 9?

4 [The witness did as directed.]

5 A. Okay.

6 Q. What is the date of this document?

7 A. 4 November 2011.

8 Q. And what, generally--what is this document?

9 A. This is a--well, what this is is an email exchange that was
10 forwarded to me. It was an email exchange between trial counsel and
11 defense on what was--what we had available, then, to turn over in
12 discovery.

13 Q. And, sir, in this email that Major Fein--or that the trial
14 counsel forwarded to you, what, specifically, did trial counsel
15 notify you of?

16 A. That we will--well, in this particular update, I believe we
17 had one left--one remaining OCA that we required to hear from in
18 order to complete their classification reviews and I believe this is
19 the time frame that we were getting prepared to restart the Article
20 32 because we thought that the OCA was going to be complete, here,
21 within a couple of weeks--complete with his classification review.

1 Q. Okay, sir. And just to clarify, is the date of this
2 memorandum on 4 November? About how many classification reviews were
3 we waiting on at this point?

4 A. On the 4th of November, I believe we had one or two left.
5 I can't recall correctly, but I know we were getting close.

6 Q. Yes, sir.

7 A. About mid-November, I want to say, we had one left to
8 complete if I recall correctly.

9 Q. Okay, sir. So now I would like to just move forward to the
10 very last period of delay in this case. So, when the previous period
11 of delay was near its suspense date, what happened?

12 A. As it got toward mid-November, we were--the classification-
13 -the final classification authority that we had to get a response
14 back from before we could start the Article 32 had ensure us that it
15 would be in about--by the beginning of the month. So, we started to
16 press on with executing the Article 32 hearing.

17 Q. Yes, sir. Can you please turn to pages 1 and 2 of tab 10?
18 [The witness did as directed.]

19 A. Okay.

20 Q. And are you familiar with this document, sir?

21 A. I am.

22 Q. What is this document?

1 A. This document is the request by the trial counsel to
2 restart the Article 32 investigation.

3 Q. Okay, sir. I'd like to just draw your attention, again,
4 just to paragraph 2 of this document.

5 A. Okay.

6 Q. What, if any, updates did trial counsel provide you on the
7 classification review?

8 A. Well, as we were getting through the classification
9 reviews--this was, as I discussed before, was where we were down to
10 one remaining--or one outstanding classification review that had to
11 be completed. And--so we had a discussion and recommendation that we
12 move on with the Article 32.

13 Q. Discussion with trial counsel?

14 A. Trial counsel.

15 Q. And, sir, what, if any, update in this request did trial
16 counsel provide you on the unclassified CID case file?

17 A. I don't remember specifically what.

18 Q. On the status of discovery?

19 A. Well, we had continuously been turning discovery over----

20 Q. Yes, sir.

21 A. ----to the defense.

22 Q. I'd just like to draw your attention, sir, to paragraph 2
23 subparagraph B; just the last sentence, sir. What if any update was

1 provided on the status of discover and turning over information to
2 the defense?

3 A. Well, it wasn't included in the--in this document--in the
4 request to restart the Article 32. He just gave me an update on the
5 evidence that they were seeking to disclose from the CID.

6 Q. Okay, sir. And then, in subparagraph C, what update did--
7 what, if any, update did trial counsel provide you on the status of
8 security clearances?

9 A. He just updated and said that they had been--the defense
10 team members had received their security clearances; the requests
11 were complete.

12 Q. Sir, in this memorandum, when did the trial counsel request
13 that the Article 32 investigation begin?

14 A. I don't remember the exact date. It was, I want to say, 30
15 days from--roughly 30 days because that is what we had planned in
16 the--for the execution of the Article 32 from when we were complete
17 until able to execute the Article 32, I want to say it was the 22nd
18 of December, 20th of December, sometime, I think; I don't remember
19 the exact date.

20 Q. Sir, what do you mean by "execute the Article 32"?

21 A. Well, to conduct the Article 32; to start the proceeding.

22 Q. What, if anything, was required before the Article 32 took
23 place?

1 A. We had an operation planned--an OPLAN in effect that we had
2 established. We referred to it as OPLAN B. The OPLAN was just--you
3 know, it's exactly what it is, it's a plan until you execute it as an
4 order. So, it was a plan out there that we were--of all the
5 requirements that we were going to have to pull together in order to
6 conduct the Article 32 hearing.

7 Q. What--some of this----

8 A. Well, we had several things. We had--well, the process--it
9 was kind of broken down into a couple of areas. One is there is
10 transportation issues, security issues, public affairs issues, there
11 are facility issues, all these things that we had to pull together
12 based on the attention that the case was getting and the space that
13 was going to be required to conduct it was not available anywhere
14 else. So, we had picked Fort Meade and we picked on operations plan
15 to put into effect so we could conduct the Article 32.

16 Q. Sir, who was involved in actually executing OPLAN B?

17 A. Well, there's--in the execution of the OPLAN, I am the
18 supported unit at the time because it's our responsibility to conduct
19 the Article 32 hearing. Our--had the facilities and capability to
20 execute the Article 32 hearing. The Military District of Washington
21 Joint Force Headquarter wrote the OPLAN and established it and so
22 they are the supporting units.

23 Q. Sir, what do you mean by "supported"?

1 A. Well, I don't have the capability to conduct an Article 32
2 or prepare the facilities, transportation, security requirements--the
3 requirements for the media that was potentially going to come to the
4 Article 32. So, I have to go out and ask for help from other units
5 and they have to provide that help. That came, primarily, from--some
6 from out Headquarters Battalion, a great deal from units here at Fort
7 Meade, the garrison here at Fort Meade, and Military District of
8 Washington Joint Force Headquarters.

9 Q. So, sir, why couldn't you execute--you're Commander of
10 Joint Base Myer-Henderson Hall, why couldn't you have executed OPLAN
11 B without the assistance of----

12 A. I just didn't have the resources to do it. You know, I got
13 a--like I said before, I mean, a TDA of Soldiers that actually
14 control on it, anywhere from a dozen day-to-day, and then I have a
15 civilian work force of, you know, 500 plus.

16 Q. So, to execute OPLAN B were just military resources needed?

17 A. Well, primarily military resources; we had civilian
18 resources as well, depending on what you're working around too.

19 Q. Yes, sir. And why was OPLAN B necessary in this case?

20 A. Well, because of the attention we were getting in the case.

21 Q. Okay, sir. So, with the prosecution's request for a delay-
22 -or to restart, rather--for a delay and to restart the Article 32,
23 did the defense object to that request to your recollection?

1 A. Defense understood the requirements for OPLAN B and they
2 objected to the time period, as I recall. I believe they wanted to--
3 or Mr. Coombs requested that we start the Article 32 about a week
4 earlier than what we had planned.

5 Q. Okay, sir. Can you please turn to page 47 of tab 10?
6 [The witness did as directed.]

7 A. Okay.

8 Q. Sir, are you familiar with this document?

9 A. I am.

10 Q. What is the date of this document?

11 A. It's 16 November.

12 Q. And what is--who is this document from and to?

13 A. It's from Mr. Coombs to me.

14 Q. And what is this document?

15 A. It's his response back to my decision to restart the
16 Article 32. He makes a recommendation, here, on the date that he
17 proposed to restart it.

18 Q. And what was that date, sir?

19 A. He requested to restart it on the 12 of December?

20 Q. So, the prosecution requested a start date of 16 and he
21 requested a start date of 12?

22 A. Of--yeah, the date was 16, yeah.

1 Q. Did the defense, in its objection, ever object to whether
2 or not OPLAN B was necessary?

3 A. No. As I stated before, he understood that OPLAN B was a
4 requirement, he just preferred to start it earlier than 30-day period
5 of time.

6 Q. Why did he request an--did the defense request and earlier
7 start period in this objection?

8 A. In this particular objection, as his note states, it said
9 they would provide them enough time to complete the hearing prior to
10 the holiday period.

11 Q. And, sir, how did you act on the prosecution--or the
12 government's request for--to restart the Article 32?

13 A. I approved it.

14 Q. Okay, sir. Can you please turn to page 48 of tab 10?

15 [The witness did as directed.]

16 Q. Are you familiar with this document?

17 A. Yes.

18 Q. What is this document?

19 A. This document is an excludable delay memorandum and I
20 approved the Article 32 investigation to restart no later than 16
21 December and account for the period of 22 April through the 16th of
22 December as excludable delay.

1 Q. So, sir, earlier you testified that the trial counsel
2 notified you that there was still one outstanding classification
3 review----

4 A. That's correct.

5 Q. ----before the Article 32 was ordered to restart.

6 A. Correct.

7 Q. Why didn't you wait until the final classification review--
8 --

9 A. Well, I was comfortable that it was---with the information
10 and the update I was getting from the trial counsel and his
11 discussions, directly, with the individuals at the agency that the
12 classification authority was having to come from, he was comfortable
13 that it was going to be done in 2 weeks and was confident in that
14 individual's ability to get it back, so we went ahead and moved out.

15 Q. Well, sir, why didn't you just wait until you actually did
16 receive the final classification reviews?

17 A. No reason to wait on one if we got it and we know we have a
18 good time-frame of when it's going to get there.

19 Q. Why is there no reason, sir, to wait?

20 A. Well, if there is no reason to wait, there's no reason to
21 wait.

22 Q. Yes, sir. So, why did you----

1 A. In other words, we were comfortable we were going to get
2 the information back from the OCA.

3 Q. So, what did you consider in executing OPLAN B at this
4 point?

5 A. Well, we were trying to----

6 Q. Ordering to restart, rather?

7 A. ----get it done. We were trying to move on.

8 Q. Can you explain that a little bit more, sir?

9 A. Well, I--exactly what I said. I mean we have a requirement
10 for PFC Manning to get complete with an Article 32 and bring this
11 entire business to close, so we were trying to move along as fast as
12 we can and wherever we can gain time, we're trying to gain time.

13 Q. Yes, sir.

14 A. If I'm--if I can gain a couple of weeks, then that's good.

15 Q. So, you considered the right of the accused?

16 A. We considered the rights of the accused from the beginning.

17 Q. And, sir, did you account for this period of delay from 16
18 November to the start of the 32?

19 A. Yes.

20 Q. Sir, can you please turn to tab 10, page 49?

21 [The witness did as directed.]

22 Q. Are you familiar with this document, sir?

23 A. I signed it; I'm familiar with it.

1 Q. What is it, sir?

2 A. It's an accounting memorandum from the period of 16
3 November to 15 December in order to execute OPLAN B, fundamentally,
4 is what it is.

5 Q. Okay, sir. And during this time, do you remember any
6 other--so from 16 November until the restart of the 32, do you
7 remember any other requests made during this time?

8 A. I don't recall, specifically, any request.

9 Q. Sir, would anything help refresh your memory?

10 A. If someone sent me a document that requested a particular
11 item or individual during this time-frame and I approved it, I'm sure
12 I would recall it if I saw it.

13 Q. Check, sir. Can you please turn to pages 50 and 51 of tab
14 10?

15 [The witness did as directed.]

16 A. Okay.

17 Q. Sir, what's the date of this memorandum?

18 A. This date--it's dated 28 November.

19 Q. And who is this document to and from?

20 A. The document is for me from the defense counsel.

21 Q. And what is this document, sir.

22 A. It's request for software necessary to conduct computer
23 forensic work.

1 Q. And did you act on this request?

2 A. Yes, I granted it.

3 Q. Can you please turn to page 52 of tab 10?

4 [The witness did as directed.]

5 A. Yeah, I approved it.

6 Q. This is your memorandum, sir? Your approval?

7 A. This is my memorandum, it's my signature.

8 Q. Okay, sir. So, during this time, did the prosecution

9 provide you with updates on the status of----

10 A. Yes, we continued to get updates.

11 Q. Did the prosecution provide you with updates on the status

12 of this OPLAN B?

13 A. Roger.

14 Q. Sir, can you please turn to pages 56 through 60 of tab 10?

15 [The witness did as directed.]

16 A. Okay.

17 Q. Sir, what's the date of this document?

18 A. This memorandum is the 6th of December.

19 Q. And who is this document to and from?

20 A. It is to me from Major Fein.

21 Q. And what is this email?

22 A. Well, it's an email telling--it's just, basically, giving

23 me an update on when they received the final classification review.

1 Q. Yes, sir. And what other updates, if any, did trial
2 counsel provide you in this email?

3 A. Well, including that, also, are forwarded emails that are
4 OPLAN B and fragmentary orders, if you will, to OPLAN B, where they
5 are and--the adjustments to OPLAN B and where we are in selecting--
6 primarily, the discussion revolved around movement and security and
7 confinement, here, in this particular local area.

8 Q. Yes, sir. So, sir, you testified about the periods of
9 delay stretching from mid-July 2010 until the Article 32 began.
10 Whether it was defense requested, government requested, there was
11 significant periods of delay in this case.

12 A. That's correct.

13 Q. Sir, were you ever concerned about how long this was
14 taking.

15 A. I remained concerned about how long it's taking.

16 Q. I'm sorry, sir, can you repeat that?

17 A. Yes, we were concerned about how long it's taking. I mean,
18 we have a requirement to get a fair Article 32 for PFC Manning. We
19 have a 120-day requirement in order to get that done.

20 Q. So what---So, again, can you just explain, again, why you
21 were concerned this was taking so long?

22 A. Well, the concern is that you have one of your Soldiers is
23 in pre-trial confinement. And so, you're trying to get this--trying

1 to move on with the Article 32 and get it complete so you can
2 continue on with whether or not there is a requirement for further
3 action. But, in order to do that, you've got to have--especially in
4 this case, with the volume of information that the accused had--been
5 accused of leaking and the classification and information was very
6 important to the entire process. And without classifying that
7 information and getting the request from these government agencies to
8 disclose that information, I didn't think PFC Manning would get a
9 fair Article 32 if we didn't have that complete.

10 Q. Yes, sir. So, a decent amount of the period of delay was
11 actually, as you just said, sir, waiting on these government
12 agencies, government organization to respond back. Did you ever
13 contact these government agencies?

14 A. No.

15 Q. About classification reviews?

16 A. No.

17 Q. Approval to disclose classified information?

18 A. I never, personally, contacted an original classification
19 authority.

20 Q. And why is that, sir?

21 A. I have--I'm confident that my trial counsel is making
22 appropriate coordination with the staffs at the agencies where the
23 original classification authorities that have to be coordinated with.

1 Q. And, sir, in this case, why were you confident that trial
2 counsel was----

3 A. I don't have any reason not to believe that trial counsel
4 is not getting at the task I'm asking him to get at.

5 Q. Yes, sir. Were they providing you with updates throughout
6 this case?

7 A. They were providing me with updates, weekly, throughout the
8 process.

9 Q. Yes, sir. And did you see the progress of this case?

10 A. Yes, we were seeing some progress. We were getting
11 information back from some agencies quicker than others.

12 Q. And did that factor into your decision?

13 A. Absolutely.

14 Q. So, sir, why--so you're a senior officer, sir, why did you
15 feel like you calling up these organizations wouldn't expedite the
16 process?

17 A. I don't think that any of the government agencies out there
18 were, you know, getting up in the morning and not getting at their
19 requirements. I mean, they were--I was comfortable that I was
20 receiving information from the trial counsel and the trial counsel
21 was coordinating--well, probably several members of the trial counsel
22 were coordinating with these agencies to get the information required
23 from the classification review.

1 Q. Sir, in your opinion, based on you experience, do you think
2 that having an O6, a full-bird colonel call up, do you think that
3 would have expedited the process?

4 A. Being a full-bird colonel in Washington DC is a relative
5 term. I mean, it's pretty important being a full-bird colonel;
6 there's certainly that aspect. But, you know, it's not like you're
7 at a Fort Hood where you're one of half a dozen; you're one of many,
8 here. Most of the ranks of the individuals in these agencies and the
9 classification authorities, they're all senior executive service or,
10 you know, senior GOs--general officers or flag officers.

11 Q. And you do have some experience working with these senior
12 government officers?

13 A. Yes.

14 Q. So, you're aware of their case loads and what's----

15 A. I understand----

16 Q. ----required?

17 A. ----how a senior executive office works in the U.S.
18 government.

19 Q. Did you consider that when making your----

20 A. Yes.

21 Q. And, sir, at any point in this case, did you contact the
22 Army G2 Office about the processing of these security clearances?

23 A. No.

1 Q. And why not, sir?

2 A. I didn't feel a requirement to. I didn't feel like I had
3 to get involved. The trial counsel had not given me any reason not
4 to believe they couldn't do their job.

5 Q. So, sir, what was your--so, again, there's been a lot of
6 delay in this case. What was your number one mission? What was your
7 end-state? What did you want the final outcome to be?

8 A. Well, the end-state is to get your Article 32 complete.

9 Q. Yes, sir.

10 A. And once the Article 32 is complete, then you determine
11 whether or not there's enough information there, you know, to move on
12 or what you recommend to the General Court-Martial Convening
13 Authority. So, that is--was the purpose throughout that time period.
14 And you can't get at a proper and thorough Article 32 unless you have
15 done the proper research and worked on the evidence through the
16 classification reviews and, you know--I mean, once it's classified
17 and it's validated, then you have to go back and get requests to
18 disclose it.

19 ATC[CPT WHYTE]: Sir, the United States has no more questions
20 for you. The defense may, after this. But thank you very much, sir.

21 MJ: Well, do you want a recess before you begin?

22 CDC[MR. COOMBS]: What the defense would suggest is this would
23 be a good time to do the *ex parte* 39(a), have the extended lunch,

1 that way my cross is not broken up and, if we could, just start back
2 at 1300 unless the Court thought the *ex parte* 39(a) would require
3 more time, then 1330 would be fine.

4 MJ: No, 1300 will be fine. Anything else we need to address
5 before we recess the Court?

6 TC[MAJ FEIN]: No, Your Honor.

7 MJ: We'll immediately proceed to the *ex parte* Article 39(a)
8 session.

9 TC[MAJ FEIN]: Ma'am, we're going to need a few minutes for the
10 Court reporter to set up the equipment, but after that, we'll have
11 the bailiff notify you, Your Honor.

12 MJ: That's fine. All right. Anything else we need to address?

13 CDC[MR. COOMBS]: No, Your Honor.

14 **[The witness was duly warned and the Article 39(a) session recessed**
15 **at 1059, 8 November 2012.]**

16 **[END OF PAGE]**

Pages 2592 through 2608 of this transcript are classified “SECRET”. This session (8 November 2012, Session 1) is sealed for Reasons 2, 3, and 4, Military Judge’s Seal Order dated 17 January 2014 and stored in the classified supplement to the Record of Trial.

1 [The Article 39(a) session was called to order at 1304, 8 November
2 2012.]

3 MJ: This Article 39(a) session is called to order. Let the
4 record reflect all parties present when the Court last recessed are
5 again present in court.

6 Over the extended lunch recess, the Court had an
7 opportunity to sign the protective order that we discussed earlier
8 today. Has that been marked as an appellate exhibit?

9 TC[MAJ FEIN]: Your Honor, it has not been marked yet.
10 Currently it is being copied and so it could be a redacted version
11 can also be used in the appellate exhibit.

12 MJ: All right. So the actual protective order will be a
13 classified exhibit, the redacted version will be in the public
14 record. Anything else we need to address before we continue with
15 cross-examination?

16 TC[MAJ FEIN]: No, Your Honor.

17 CDC[MR. COOMBS]: No, Your Honor.

18 MJ: All right. Proceed.

19 CDC[MR. COOMBS]: Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 **Questions by the civilian defense counsel [MR. COOMBS]:**

22 Q. Colonel Coffman, I want to first talk to you about the 706
23 board that you appointed, okay?

1 A. Okay.

2 Q. Now, you ordered the 706 board to--actually, on 3 August

3 2010?

4 A. Yes.

5 Q. And you appointed Lieutenant Colonel Almanza as the IO for

6 the----

7 A. Investigation.

8 Q. ----Article 32.

9 A. For the Article 32.

10 Q. So that was a "yes"?

11 A. Yes.

12 Q. And on 11 August 2010, the defense requested a delay of the

13 Article 32 hearing, correct?

14 A. Yes.

15 Q. And you approved of that delay on the 12th of August?

16 A. I believe the 12th is correct, yeah.

17 Q. Now, in your approval, you order that the period from 11

18 August 2010 until the R.C.M. 706 board was completed would be

19 excludable delay, is that correct?

20 A. Yes.

21 Q. And you approved the defense's delay request in order,

22 basically, to conduct the 706 board?

23 A. That's correct.

1 Q. Now, you excluded the time from 11 August 2010 until the
2 conclusion of the R.C.M. 706 board because 11 August 2010 was the
3 first time that you received a request for a delay from the defense?

4 A. That's correct.

5 Q. Now, on 22 September 2010, you ordered what was called, "a
6 preliminary classification review"?

7 A. I ordered a preliminary classification review. I don't
8 remember the specific date.

9 Q. Does that sound about right?

10 A. It would have been probably close to the 22nd of September.

11 Q. Okay. And the preliminary classification review was
12 required and--in your mind and, therefore, you needed to delay the
13 706 board?

14 A. That's correct.

15 Q. And you ordered the preliminary classification review
16 because you believed that PFC Manning might, potentially, discuss
17 classified information?

18 A. During the 706 board, that's correct.

19 Q. And, at the time that you ordered the preliminary
20 classification review, you assumed that PFC Manning might discuss
21 classified information at the TS-SCI level?

22 A. Yes.

1 Q. You believed that because, at that point, you were aware of
2 some of the information that had allegedly been leaked?

3 A. We had--the information that had allegedly been leaked was,
4 potentially, TS-SCI information, that's correct.

5 Q. Okay. And you also believed that because the defense had
6 given you notice of the fact that PFC Manning might discuss TS-SCI
7 information?

8 A. Yes.

9 Q. Now, you indicated--I just want to bring up something you
10 talked about on direct. You said that the defense objected to the
11 preliminary classification review, is that correct?

12 A. Yes.

13 Q. Now, isn't it true that we didn't object to the preliminary
14 classification review, we just simply objected to one of--one aspect
15 of your order that required PFC Manning to divulge what he was going
16 to share with defense counsel?

17 A. Yes.

18 Q. And other than that, we were not objecting to the
19 preliminary classification review, correct?

20 A. That's correct.

21 Q. The preliminary classification review completed its work on
22 13 December 2010?

23 A. I don't remember the exact date that they completed it?

1 Q. Why don't you take a look at tab 1, page 44?
2 [The witness did as directed.]
3 A. That's document 13 December 2010, that's correct.
4 Q. Okay. And it was not until 3 February 2011 that you
5 ordered the R.C.M. 706 board to resume its work?
6 A. That's correct.
7 Q. On 13 December 2010, you did not know, at that point,
8 whether or not the 706 board members had been identified, correct?
9 A. That's correct--they had been identified or that they had
10 the appropriate security clearances.
11 Q. All right. So, just to make sure, you did not know, on 13
12 December 2010, whether or not the 706 board members had been
13 identified?
14 A. No.
15 Q. And did you ask the trial counsel why, as of 13 December
16 2010, the 706 board members were not identified yet?
17 A. No.
18 Q. Do you know how many board members were on the 706 board?
19 A. They had three board members.
20 Q. And do you recall when it was that the trial counsel
21 actually told you, by name, who those board members would be?
22 A. I don't remember the exact date, no.

1 Q. Do you recall whether or not when the board members were
2 selected, whether they had the requisite TS-SCI clearance?

3 A. I believe that--if my memory is correct, I believe one had
4 and two had not.

5 Q. And did you ask the trial counsel why they had not
6 identified the members in advance of 13 December 2010 that had the
7 TS-SCI clearance?

8 A. No.

9 Q. Do you know how long it took to complete the process of
10 getting the other two members a TS-SCI clearance?

11 A. I don't remember the exact length of time.

12 Q. Your trial counsel's chronology that they provided to the
13 Court states that on 31 January 2011, all R.C.M. 706 board members
14 were granted security clearances at TS-SCI and read-on to SCI. Did
15 the trial counsel tell you about that fact?

16 A. The trial counsel let me know when they were complete with
17 their--that they were ready to continue with the 706 board.

18 Q. And when the trial counsel told you that, were they telling
19 you that they had all the members with TS-SCI clearance?

20 A. That among a couple other things, yeah.

21 Q. And did you ask the trial counsel, at that point, why it
22 had taken from the 13 December to the 31 January time frame to get
23 all the members with a TS-SCI clearance?

1 A. No.

2 Q. Now, you indicated before that you would like to save time
3 wherever you could save time, right?

4 A. Right.

5 Q. Was there anything that was preventing the trial counsel
6 from identifying members prior to 13 December 2010 who had a TS-SCI
7 clearance?

8 A. Other than trying to get--identify board members with
9 clearances, no.

10 Q. And if they identified a board member who didn't have the
11 requisite clearance, was anything preventing the trial counsel from
12 making sure or getting those board members a TS-SCI clearance prior
13 to 13 December 2010?

14 A. Prior to the classification review being complete, we
15 didn't know there was a requirement.

16 Q. Well, you knew that that was a possibility, correct?

17 A. Absolutely.

18 Q. And you, earlier, said that wherever we could save time, we
19 would save time, right?

20 A. That's correct.

21 Q. And, obviously, you would agree with me, sir, that if you
22 had an inclination that TS-SCI is going to be discussed, it would

1 behoove you to go ahead and get the members with a TS-SCI clearance,
2 correct?

3 A. It would.

4 Q. And you indicated that that process could take up to a
5 year, right?

6 A. That process could take a long time. 6 weeks happened--was
7 pretty quick, though.

8 Q. Correct, but my question was that you indicated that that
9 process could take up to a year, correct?

10 A. It could, depending on the individual having to get the
11 investigation, yeah.

12 Q. So, again, it would be a good idea, as soon as you could,
13 to start that process?

14 A. Sure.

15 Q. And had that process been started ahead of 13 December
16 2010, nothing would have prevented the board from beginning its work
17 on 13 December 2010, correct?

18 A. Yes, if we had board members with TS-SCI clearances prior
19 to then, we could have started the board--706 board sooner.

20 Q. We could have started it on 13 December 2010, correct.

21 A. Right. Like I said, we're looking for the preliminary
22 classification to validate the fact that this was going to be a
23 requirement.

1 Q. Sir, my question, though, is had you identified members
2 with TS-SCI clearance on 13 December 2010 when you got the
3 preliminary classification review back----

4 A. Right.

5 Q. ----you could have started the board on that day, correct?

6 A. That's correct.

7 Q. Now, were you concerned that the board wasn't ready to
8 start or restart on 13 December 2010?

9 A. Not particularly, no.

10 Q. And you weren't concerned because why?

11 A. Well, I knew we had to complete a 706 board; there were
12 requirements for the board member. We're dealing with--in the entire
13 case, we're dealing with classified information which requires--just
14 is a lengthy process. Any time you're dealing with classified
15 information, things are more difficult; more time consuming than
16 other, if you're dealing with unclass information.

17 Q. Okay. But my question was you weren't concerned that the
18 board wasn't ready to resume its work as of 13 December 2010?

19 A. No.

20 Q. Now, when the board to do its work, it was quickly apparent
21 that you were going to need, at least, one meeting to take place in
22 the SCIF, correct?

23 A. Yes.

1 Q. And, sir, the board needed to meet with PFC Manning only on
2 one occasion, actually, in the SCIF, is that right?

3 A. I'm not sure exactly how many meetings needed to happen in
4 the SCIF.

5 Q. You weren't briefed on that by the trial counsel?

6 A. I didn't go into the details of what interview was going to
7 happen when during the 706 board.

8 Q. So, if I'm understanding your testimony right now, you knew
9 that a meeting would have to take place in the SCIF, but you didn't
10 know how many?

11 A. How many meetings were going to require to be conducted in
12 a SCIF.

13 Q. And we'll talk about Dr. Sweda's request for delay and I
14 think that might jog your memory on that in a moment. But, other
15 than what had to take place in a SCIF, everything else could be done
16 outside of a SCIF, correct?

17 A. If it was going to be unclass information, it could.

18 Q. And since it was going to be unclasss information, nothing
19 would prevent the board members from discussion that with PFC Manning
20 outside of a SCIF?

21 A. That's correct.

1 Q. So, obviously then, the 706 board could have resumed its
2 work prior to the date that you ordered it, 3 February 2011, if they
3 were just going to discuss the unclassified information, correct?

4 A. Yes.

5 Q. Did you ask the trial counsel about that possibility,
6 about, "Look, we're not ready to go at 13 December 2010, but why
7 don't we start the unclassified?"

8 A. No, I didn't.

9 Q. Did the trial counsel ever suggest that as a possibility to
10 you?

11 A. Not that I recall.

12 Q. Did you know when the trial counsel actually began looking
13 for a SCIF for the R.C.M. 706 board's use?

14 A. No.

15 Q. But as--actually, we talked about this last week. You said
16 you were surprised when I told you that the trial counsel didn't
17 begin that process until after 13 December 2010.

18 A. Right.

19 Q. And you were, in fact, surprised by that, right?

20 A. Right.

21 Q. And according to the trial counsel's chronology provided to
22 the Court on page 50 of Appellate Exhibit 330, they contacted INSCOM

1 to request to use their SCIF on 27 January 2011. Did the trial
2 counsel inform you of that?

3 A. No.

4 Q. Did the trial counsel ever tell you why they waited until
5 27 January 2011 to attempt to locate a SCIF for the Court's use?

6 A. We had a discussion on--during updates of where--the fact
7 that we had to conduct a meeting or an interview in the SCIF, but I
8 never into the details of where they were actually trying to get it
9 done until they came back to me and said that they had found a
10 location.

11 Q. So that answer would be "no," then? They didn't tell you--
12 --

13 A. No.

14 Q. Now, according to the trial counsel's chronology, again, on
15 page 58 of Appellate Exhibit 330, they scheduled a recon of INSCOM's
16 SCIF on 25 February 2011. Did the trial counsel tell you about this
17 fact?

18 A. I knew that they were looking to secure a facility in order
19 to conduct the interview.

20 Q. Did they tell you about going to the facility to do a
21 recon?

22 A. Right, we just--there were several facilities, I believe,
23 reconned other than that one.

1 Q. Now, again, last week you indicated you were surprised when
2 I informed you that they were scheduling that recon or trying to do
3 that recon as late as 25 February 2011?

4 A. Of the INSCOM facility, yes.

5 Q. And that was surprising to you, right?

6 A. Yes.

7 Q. Because you wanted the board to resume its work on 3
8 February 2011?

9 A. 3 February.

10 Q. And I think your words to me were, "I would expect them to
11 be prepared to execute the SCIF aspect of that on the date I ordered
12 the board to resume"?

13 A. Correct. They were looking for a SCIF at the time, right.

14 Q. Correct, but you indicated to me that you believe they
15 should be prepared to execute that on the day that you ordered the
16 board to resume?

17 A. True.

18 MJ: Mr. Coombs, can I stop you there for just a moment? You're
19 referring to a government chronology that's an attachment of--which
20 chronology are we talking about?

21 CDC[MR. COOMBS]: Talking about Appellate Exhibit 330, Your
22 Honor; it's an appellate exhibit. The government provided a 231-page
23 chronology.

1 MJ: It's that one? Okay.

2 CDC[MR. COOMBS]: And so, that's why I'm giving you some page
3 numbers. I can go back, though, to give you some of these references
4 if you want to record them so you can look at it later or right now;
5 it's fine.

6 MJ: Okay. It's fine.

7 CDC[MR. COOMBS]: So, ma'am, the first reference that I
8 referred to was on page 50 of Appellate Exhibit 330.

9 MJ: Okay.

10 CDC[MR. COOMBS]: And the second reference, ma'am, is on page
11 58.

12 MJ: Okay.

13 CDC[MR. COOMBS]: And, now, I'm going to be referencing what's
14 on page 60 of Appellate Exhibit 330.
15 [Examination of the witness continued.]

16 Q. Sir, on 1 March 2011, the trial counsel's chronology
17 indicates the scheduled a tour of the INSCOM SCIF for the 706 board.
18 Did they tell you about that?

19 A. I was aware that they were reconning facilities for a 706
20 board----

21 Q. Well, this one, though, was----

22 A ----but I didn't know when they----

1 Q. ----to schedule a tour for the 706 board. Did you know
2 about that?

3 A. Yes.

4 Q. And did the trial counsel tell you why they needed to
5 schedule a tour of the INSCOM facility for the 706 board?

6 A. We had gone through the process--or the trial counsel had
7 gone through the process of looking at several different SCIF
8 facilities and it was related to the capability of the facility and
9 access to the facility. Most of these facilities are not unused
10 facilities waiting for us to conduct an interview. I mean, they're
11 used in day-to-day operations, so, he wanted a tour so everyone knew
12 where and when they needed to be. And in----

13 Q. So this----

14 A. ----addition, you've got to get to and from the facility
15 and make plans for how you get the accused from the confinement
16 facility to the SCIF.

17 Q. Okay. I guess my question was a tour of the facility for
18 the 706 board members. So, was this in order for the board members
19 to know where to go and see the facility, or was there another
20 purpose for it?

21 A. Well, if the board members are going to--I'm assuming that
22 the board members are going to recon their facility--in order to

1 conduct this interview, they're going to make sure the facility meets
2 their requirements to conduct the interview.

3 TC[MAJ FEIN]: Your Honor, we object. That's not a fact that's
4 anywhere in evidence that it even occurred; the 706 board touring a
5 facility.

6 MJ: Which--you're relying on a chronology by the government, is
7 that correct?

8 CDC[MR. COOMBS]: I am, Your Honor.

9 MJ: And that's on page----

10 TC[MAJ FEIN]: What's the exact----

11 CDC[MR. COOMBS]: The exact page is Page 60 of Appellate
12 Exhibit 330.

13 MJ: And where's the entry you're referring to?

14 TC[MAJ FEIN]: Your Honor, I think the entry is probably one-
15 third down: 1 March 2011, Tuesday. It says, specifically,
16 "Scheduled a tour of the INSCOM facility for the 706 board."
17 Unfortunately, the defense is interpreting this to mean that the
18 board, themselves, toured versus the prosecutors touring it for the
19 board. That's what--this line of questioning did not occur. There's
20 no--it's just a misunderstanding.

21 CDC[MR. COOMBS]: Obviously, if Colonel Coffman can talk about
22 what he's been briefed on. If he says he hasn't been briefed on
23 that, then he can. It's not a proper objection.

1 MJ: It's fine. Just go ahead and ask the question. Overruled.

2 [Examination of the witness continued.]

3 Q. So, did the trial counsel tell you that the 706 board was
4 scheduled to do a tour of the INSCOM facility?

5 A. Yes.

6 Q. And from your memory, why was that tour required for the
7 706 board?

8 A. As I stated before, so they knew whether or not the
9 facility met the requirements for them to conduct the interview.

10 Q. And, again, another aspect of this, I believe at the time
11 that when we talked, was the wanting to schedule that facility in
12 order to provide the most privacy for PFC Manning, right?

13 A. That's correct.

14 Q. And you expressed, on direct, that you wanted to do it on
15 the weekend or after hours on a weekday, is that right?

16 A. That's correct.

17 Q. And did you discuss those concerns with the trial counsel?

18 A. I did.

19 Q. And was that one of your concerns?

20 A. That was the guidance that I gave them; that we attempt to
21 do it after duty hours. Like I said before, the SCIFs are not just
22 empty, open facilities. There are several available, so we need to--
23 there are people that work in these, potentially, on a day-to-day

1 basis, so you need to de-conflict their schedules to--the individuals
2 that use them for a regular work-week. And then--so, we tried to
3 conduct it after duty hours or on the weekends. Weekends were
4 preferable because there would be less individuals around the
5 facility during the weekend.

6 Q. And, from your memory, were you informed that the trial
7 counsel had secured the INSCOM SCIF for Saturdays only?

8 A. I don't recall exactly what it was, but it was a weekend,
9 if they were following my guidance right.

10 Q. Okay. And, obviously--what was your concern of--tell me
11 what your concern was to have it scheduled after duty hours or on the
12 weekend.

13 A. Okay. The first part I just discussed, I think, with de-
14 conflicting the individuals that actually work in the facility on a
15 day-to-day basis.

16 Q. Uh-huh.

17 A. The second part of that was, as I discussed earlier, the--
18 PFC Manning's movement to and from the facility and then moving out
19 of vehicles into the facility and in and around the facility during a
20 weekend would have been--privacy aspect of that. This was getting a
21 lot of attention in the media and we had already, potentially, had
22 some experiences with different agencies and organizations, you know,
23 coming out and voicing their opinions and I just thought it would be

1 easier on everyone concerned--on us as far as our resources and PFC
2 Manning, especially if he's going to a 706 board, to have privacy as
3 he moves from his vehicle in and around the facility to get to the
4 SCIF.

5 Q. And you told me you were concerned that media might find
6 out or other people might find out?

7 A. Oh, the media finds out, other people find out, and then it
8 becomes a public event. I'm just trying to prevent it from becoming
9 a public event.

10 Q. Okay. And, obviously, even if you schedule it on a
11 Saturday, media could find out about it, right?

12 A. They could, absolutely.

13 Q. And other people could find out about it?

14 A. Sure, but less risk.

15 Q. And, you know, your initial deadline--let's talk about that
16 for a moment--for the 706 board, was to complete this on 4 March
17 2011, right?

18 A. It was the--yes.

19 Q. And the board didn't submit its report on 4 March 2011?

20 A. They did not.

21 Q. On 14 March 2011, almost 2 weeks after the suspense date
22 set by you, Dr. Sweda sought an extension of the suspension, correct?

1 A. Yes, he provided a written document 11 days following the
2 suspense date.

3 Q. And did you ask Dr. Sweda why he was requesting an
4 extension?

5 A. No, I didn't personally talk to Dr. Sweda

6 Q. I'm sorry, I didn't finish my question. Did you ask him
7 why he had not submitted his extension prior to the 4 March 2011
8 deadline?

9 A. I had gotten information in discussion with the trial
10 counsel that the board was not going to be complete, through a phone
11 call and through email, and the discussion was that the board was not
12 going to be complete with the 706, they were going to need additional
13 time. And so, we went through a process from that point on of, you
14 know--like I testified to earlier, they were trying to get an
15 appointment--the last interview done before the 10th of April----

16 Q. My question, sir, though, is did you ask Dr. Sweda why he--
17 --

18 A. I did not talk to Dr. Sweda.

19 Q. Okay. So, the answer, then, would be you didn't ask him
20 why he did not submit----

21 A. No.

22 Q. ----an extension prior to the deadline?

23 A. No.

1 Q. And, obviously, you're not, as a commander, used to people
2 missing suspenses and not giving you a heads up on that, correct?

3 A. That's a correct statement.

4 Q. And you would expect if someone is going to miss a
5 suspense, they give you an advanced notice, right?

6 A. I had noticed that the suspense was not going to be met.

7 Q. Not from Dr. Sweda?

8 A. Not from Dr. Sweda, no; from trial counsel.

9 Q. Now, in Dr. Sweda's memorandum--and you probably will have
10 to take a look at it, so, if you go to tab 2, page 7 and just tell me
11 when you get there.

12 [The witness did as directed.]

13 A. Okay.

14 Q. So, in his memorandum, Dr. Sweda relates to you that he
15 needs an additional 57 more days from the original suspense date of 4
16 March because "the evaluators are coordinating suitable dates and
17 times for the final evaluation session to take place. This involves
18 multiple parties. Additionally, the final interview will take place
19 in a SCIF and this has resulted in the consumption of extra time for
20 this aspect of the evaluation to be coordinated." Do you see where
21 that says that?

22 A. Yep, paragraph 2.

1 Q. So, going back to an earlier thing that you weren't for
2 sure about, they needed to meet with PFC Manning once in a SCIF,
3 correct?

4 A. Yeah, according to this document, yes.

5 Q. All right. And here, Dr. Sweda was saying that he was
6 having problems coordinating suitable dates for the final evaluation,
7 correct?

8 A. That's correct.

9 Q. Did you ask Dr. Sweda why he was having problems
10 coordinating suitable dates for the final evaluation?

11 A. I didn't talk to Dr. Sweda.

12 Q. So that was a "no" then?

13 A. I did not talk to Dr. Sweda. No, I did not talk to Dr.
14 Sweda.

15 Q. Okay. And did you ask the trial counsel why the board was
16 having difficulty scheduling a--or coordinating suitable dates and
17 times for the final evaluation?

18 A. I believe in the discussion of our weekly updates with the
19 trial counsel, we had that discussion. It revolved around the fact
20 that the individuals were--several board members, like I said, worked
21 in different places. They were not--this was not the only thing they
22 had on their plate at the time, nor was it the only thing that the

1 facility had to--mission the facility had at the time. So, they were
2 having difficulty coordinating those schedules and the location.

3 Q. And part of that coordination difficulty was because they
4 were limited to Saturdays, correct?

5 A. Yes.

6 Q. And did you ever ask the trial counsel, "Given the
7 coordination problems, why don't we just have the board meet on some
8 other day besides a Saturday?"

9 A. We had that discussion with him.

10 Q. Do you know of any reason why the board could not meet in
11 the SCIF on any other day of the week besides Saturday?

12 A. No.

13 Q. Were you ever informed that Dr. Sweda actually requested
14 the ability to meet with PFC Manning on some other day besides a
15 weekend day?

16 A. No, I don't recall that.

17 Q. And you received Dr. Sweda's request on 14 March 2011,
18 correct?

19 A. That's correct.

20 Q. You didn't act on his request until 18 March 2011, is that
21 correct? And, sir, if you need to refresh your memory, just--it's on
22 page 9, same tab.

23 A. Okay. It is--yes, 18 March.

1 Q. Sir, can you explain why the 4-day delay and---

2 A. In responding to this memorandum?

3 Q. I'm sorry, sir?

4 A. No, I don't know any reason in particular.

5 Q. Now, the extension request that Dr. Sweda asked for a delay

6 until 29 April 2011, is that correct, sir?

7 A. The original request, I believe, requested till 29 April.

8 Q. And, sir, you set a suspense date of 16 April 2011?

9 A. Yes.

10 Q. You set an earlier date because you wanted Dr. Sweda to

11 move out and get the board complete?

12 A. Finish up the board, right.

13 Q. You conveyed your concern to the trial counsel that the

14 board needed to complete its work, right?

15 A. By 16 April.

16 Q. And you wanted to expedite the 706 process?

17 A. We wanted to get it complete, roger.

18 Q. Now, at this point, the board really just needed to meet

19 with PFC Manning in a SCIF?

20 A. Yes.

21 Q. Now, if needed, there were SCIFs that were within your

22 command's control, isn't that correct?

23 A. Yes.

1 Q. And did you ever explore the possibility of using one of
2 the SCIFs that is within your command's control?

3 A. Yes, we did.

4 Q. And can you tell me about that?

5 A. Well, we have one other SCIF facility that is in our
6 control; it's at Fort McNair. That SCIF is used on a day-to-day
7 basis by the MDW and Joint Force Headquarters, so it's--deconflicting
8 SCIF and scheduling that as opposed to the INSCOM SCIF was really a
9 wash in the analysis of which one is--which one could completed
10 quicker.

11 Q. And when we spoke earlier, you indicated that you hadn't
12 considered other SCIFs, so if you can tell me, from your memory, now,
13 when that discussion was and who was involved----

14 A. No, I don't remember exactly when the discussion was, but I
15 think in the discussion we had--I may be recalling it incorrectly,
16 but we did discuss the SCIF at Fort McNair.

17 Q. All right. Now, if there was another SCIF, either at Fort
18 McNair or, for that matter, just another SCIF within the MDW region--
19 --

20 A. Right.

21 Q. ----that was available other than a Saturday, you could
22 have probably used that, correct?

23 A. Yes, potentially.

1 Q. Sir, let's go to Dr. Sweda's second extension request on 15
2 April 2011. And that's that same tab 2, page 8. Now, Dr. Sweda, in
3 this request, explains that the delay was necessary because the
4 board's limited availability to meet as a full board to discuss the
5 report. This is because of conflicting schedules and demands of the
6 three board members.

7 You see where it says that, sir?

8 A. On page 8?

9 Q. Yes, sir, if you----

10 A. Tab 2?

11 Q. ----go to paragraph 2, "We're nearing," and it's a
12 sentence.

13 A. Okay. There you go. I got it.

14 Q. Okay. So you see where it says that, sir?

15 A. Yes.

16 Q. Did you ask Dr. Sweda why the board was having limited
17 availability to meet as a full board?

18 A. I, personally, did not talk to Dr. Sweda.

19 Q. Did the trial counsel ask Dr. Sweda why the board was
20 having difficulty meeting as a full board?

21 A. I don't know if the trial counsel asked him that or not.

22 Q. Was the 706 board duties the primary duty for the board
23 members?

1 A. It is a primary duty for the board members, yes.

2 Q. And that would mean, essentially, that that board--that

3 duty would take precedent over other duties?

4 A. Depending on what else they had on their plate, correct.

5 Q. And I just wanted to know if that was your understanding,

6 sir, that the 706 board's duty----

7 A. Yes, I would think that that would-----

8 Q. ----to do the 706 board was----

9 A. ----be a--right, that would be a primary duty.

10 Q. Okay. Now, you approved of Dr. Sweda's request on 15 April

11 2011? That would be the----

12 A. I approved his request, yes. That's not dated 15 April.

13 Q. Now, if you go to tab 2, page, 10, sir?

14 [The witness did as directed.]

15 A. Okay.

16 Q. So, you approved his request on 15 April 2011?

17 A. That's correct, for the 22nd of April.

18 Q. Right. So, I'm just saying you approved it on this day.

19 A. Yes.

20 Q. Now, on 23 April, the 706 board submitted its final report?

21 A. 22 April, yes.

22 Q. And--now, I want to back track just for a moment and talk

23 about your monthly excludable delay memorandums, okay?

1 A. Sure.

2 Q. All right. Now, on 12 October--and, in fact, this will
3 help if we just go back to that real fast--tab 1, sir, page 45.
4 [The witness examined the document.]

5 Q. Okay, sir. On 12 October 2010, you began your practice of
6 issuing monthly excludable delay memoranda, correct?

7 A. Yes, to account for the delay period.

8 Q. And you had conversations with the trial counsel about how
9 long it was taking to process the case?

10 A. Yes.

11 Q. And the trial counsel told you the need to account for this
12 time with excludable delay memoranda?

13 A. That was their recommendation, yes.

14 Q. Now, you didn't write this 12 October 2010 memorandum,
15 correct?

16 A. No.

17 Q. The trial counsel wrote this for you?

18 A. Yes.

19 Q. Now, in the 12 October 2010 memorandum, you state that the
20 period from 12 July 2010 until the date of this memorandum is
21 excludable delay under R.C.M. 707. Do you see that, sir?

22 A. Yes.

1 Q. Now, again, going back to what we kind of started off with,
2 on 3 August when you appointed Lieutenant Colonel Almanza as the 32
3 IO, you gave him a 10-day suspense to complete the----

4 A. The original suspense, yes.

5 Q. And on 11 August, when you received the defense's delay
6 request and approved it on 12 August, that's when you delayed the
7 Article 32 hearing, correct?

8 A. That's when I started the delay process, yes.

9 Q. Now, as we previously covered in your 12 August 2010
10 approval, you excluded the time from 11 August 2010 forward at that
11 point, correct?

12 A. I don't know what the exact date is in your--which----

13 Q. From your initial----

14 A. ----memorandum are you referring to?

15 Q. ----when you initially approved----

16 A. Yes.

17 Q. Okay.

18 A. I'm with you.

19 Q. Okay. So, you approved it from 11 August 2010 forward?

20 A. Yes.

21 Q. Now, on 3 August, when you directed that the Article 32
22 hearing be complete within 10 days, you did not believe at that point
23 that you had a delay request, obviously?

1 A. Right.

2 Q. So, if you did not receive a delay request from the defense
3 on 11 August 2010, under your order, the delay would need to be
4 completed by--or the Article 32 would need to be completed by 13
5 August 2010, correct?

6 A. Yes

7 Q. So, for this--the initial approval of 12 August 2010, why
8 didn't you start the excludable back to 12 July 2010 at that point?

9 A. Because when I received the case, it was already under a
10 delay request.

11 Q. Was that why you did that?

12 A. It was--this was a continuation of delay from the 11 August
13 request and then the defense's 11 August request, I assume
14 responsibility for the delay to 12 July.

15 Q. Okay. So, is that why you're telling--you're telling the
16 Court and myself, now, that you excluded--you didn't exclude the
17 delay from 12 July on the 12 August date because you believed, at
18 that point, there was already a delay in place?

19 A. There was a delay in place--when we got the case and PFC
20 Manning came from Kuwait, there was already a delay in place. The
21 defense had already requested a delay from the previous court-
22 martial--Special Court-Martial Convening Authority.

1 Q. Sir, earlier when we talked about when you ordered the 32,
2 you indicated that you ordered the 32 to take place within 10 days
3 because you didn't believe the delay----
4 A. No, I said I ordered----
5 Q. ----was in place?
6 A. ----the Article 32 to take place in 10 days. We're now at
7 the discussion of excluding the delay to 12 July.
8 Q. Correct, sir. So, when you went ahead and approved of the
9 delay request on 12 August 2010, you did not take that delay request
10 back to 12 July, correct?
11 A. I'd have to go back to look at it.
12 Q. And that was because you at the time that you ordered that
13 you ordered the 32 to begin, there was no delay and the 32 needed to
14 be done within 10 days?
15 A. I gave the IO 10 days to accomplish the Article 32.
16 Q. And you gave that IO 10 days, because at that point, when
17 you ordered it, the case was new to you, correct?
18 A. The case was new to me, yes.
19 Q. And no defense counsel had asked you for any delay?
20 A. No defense----
21 Q. No defense has asked a delay of you at that point, correct?
22 Until 11 August?
23 A. Until 11 August, correct.

1 Q. All right. Now, let's look at the 12 October excludable
2 delay memorandum and look at paragraph 3, sir.

3 [The witness did as directed.]

4 Q. You identify the following as your basis for excludable
5 delay----

6 A. Right.

7 Q. ----the original classification authority's review of
8 classified information, the defense's request on 11 July, 18 July, 25
9 August, 26 August, 3 September, the preliminary classification review
10 order, and the defense response to the preliminary classification
11 review order, is that correct?

12 A. Yes.

13 Q. And you identified all of these as the basis for the
14 excludable delay?

15 A. Yes.

16 Q. This is based upon the advice from your trial counsel.

17 A. Trial counsel, right.

18 Q. And, as we discussed earlier, the trial counsel drafted
19 this for you?

20 A. Yes.

21 Q. You didn't draft this?

22 A. No, I did not personally draft this.

1 Q. Now, one of those bases that you listed was the OCA review
2 of classified information?

3 A. That's correct.

4 Q. And this basis--based upon our previous discussion--correct
5 me if I'm wrong, but this basis meant two things to you: first the
6 OCA classification review of the charged documents and, second, the
7 OCA to review information that the trial counsel wanted to release to
8 the defense?

9 A. Disclosure requests, right.

10 Q. So those were the two things that that meant to you?

11 A. Those were the two primary considerations, yes.

12 Q. Okay. So, let's discuss the OCA classification review of
13 the charged documents. As of 12 October 2010, you believe that the
14 OCAs should be reviewing the charged documents in order to complete
15 their classification review?

16 A. Right.

17 Q. And, at that point, based upon what the trial counsel had
18 relayed to you, the review of the charged documents was the smaller
19 subset of documents that the trial counsel or the government had
20 selected to charge as opposed to all the leaked documents, correct?

21 A. Correct.

22 Q. And that's what you understood the OCAs to be reviewing?

23 A. Right.

1 Q. Now, you did not know any of the OCAs, at this point, by
2 name, correct?

3 A. No.

4 Q. And you didn't know any of the OCAs--what exactly they were
5 reviewing?

6 A. No.

7 Q. You didn't know how many document each OCAs were being
8 asked to review?

9 A. No.

10 Q. And you did not know how long it would take for the OCAs to
11 complete their classification review?

12 A. That's correct.

13 Q. Now, let's talk about some of your other excludable delay
14 memorandums. From 10 November 2010 to 15 February 2011, you signed
15 four separate excludable delay memorandums and these can be found on
16 pages 47 through 50 of that same tab. Just take a moment to take a
17 glance at those and when you're done you can just look up at me.
18 [The witness did as directed.]

19 A. Okay.

20 Q. Okay.

21 A. They haven't changed since this morning.

22 Q. And before, I'm sure, sir. So, these four memorandums, the
23 10 November 2010, the 17 December 2010, the 14 January 2011, and the

1 15 February 2011, exclude 105 days of time. Does that sound about
2 right to you, sir?

3 A. If those are the dates, it's correct.

4 Q. And about the length of that time, 105 days, does that
5 sound about right?

6 A. It sounds about right.

7 Q. And would you agree with me that each of these memoranda
8 are, essentially, the same?

9 A. They are very close to the same.

10 Q. The only real difference between these four is the date,
11 for the most part?

12 A. There are a couple of--well between the first one and the
13 last one, there's one difference.

14 Q. Yeah, the first one lists the preliminary classification
15 review order and it's not in the other three, right?

16 A. That's correct.

17 Q. So, other than that, they're, essentially, the same?

18 A. Essentially the same.

19 Q. And all these memorandums were drafted by the trial
20 counsel?

21 A. Yes.

22 Q. And you never made any substantive changes to any of these
23 memoranda?

1 A. No. Like I said before, no content changes.

2 Q. You might have noted a period of out place----

3 A. Period or punctuation error or something, right.

4 Q. Okay. But no substantive changes?

5 A. Right.

6 Q. Now, when one of these excludable delay memoranda was

7 presented to you, you would typically speak to a trial counsel about

8 10 to 15 minutes about it?

9 A. It depended on what the discussion was about, but probably

10 10 to 15 minutes.

11 Q. Okay. And after that 10 to 15-minute conversation, then

12 you would sign the memorandum?

13 A. Yeah.

14 Q. And during the 105 days of this delay, did you know what

15 the OCAs were doing?

16 A. Right, during the weekly updates, as I stated this morning--

17 -during the weekly updates or updates with the trial counsel, they

18 would tell me that the OCAs were continuing to press on with the

19 information, continue to work on getting their classification reviews

20 complete and the disclosure requests complete.

21 Q. All right. So, let's dig down into what you were told,

22 then. Did you know whether or not each of the OCAs had begun their

23 classification reviews?

1 A. I didn't know the status of each OCA nor the status of how
2 many documents they had and how many they were--had to review and
3 where they were in their review process----

4 Q. All right. So----

5 A. ----during those updates.

6 Q. ----because you didn't know any of that, you had no idea
7 how much longer it would take for each of the OCAs to complete their
8 review?

9 A. I didn't have a set time, no.

10 Q. Did you ever ask that question: how much longer is it
11 going to take them to complete their review?

12 A. Not particularly, no.

13 Q. And the trial counsel never briefed you on how much longer
14 it was going to take to complete their review?

15 A. We just knew it was probably going to take a while.

16 Q. And you also were never briefed by the trial counsel on how
17 many people from each OCA was even working on the classification
18 review?

19 A. No.

20 Q. You never asked that question?

21 A. No.

22 Q. And the trial counsel never briefed you on how many
23 documents each OCA was reviewing?

1 A. No.

2 Q. You never asked that question?

3 A. No.

4 Q. I'm sorry, sir, was that a "no"?

5 A. No.

6 Q. And the trial counsel, also, during this time frame
7 basically just said the OCAs were continuing to press on? Is that---

8 -

9 A. Well, they--we had a discussion about the classification
10 reviews, disclosure requests, and as--come about, I think in March,
11 we started getting--well, we got some initial feedback, initially,
12 from the OCAs----

13 Q. And we'll get to the March time frame, but I'm talking
14 about this time frame, sir.

15 A. Well, even prior to March, there were some that came back
16 quicker than others; they had accomplished those classifications and
17 released quicker than others. I don't remember the exact dates, but
18 as I would have my updated with the trial counsel and the trial
19 counsel is interfacing with the OCAs, they were continuing to move
20 on. Like I said before, I don't have any reason to believe the trial
21 counsel was not doing his job.

1 Q. All right. Well, let's talk about some of the other
2 things, then. At this point, though, you had no independent
3 information to verify what the OCAs were doing, right?

4 A. Independent information? As far as what? Me talking to
5 the OCAs?

6 Q. No, as far as just independent information to know exactly
7 what the OCAs were doing, where they were at----

8 A. No, I didn't have a tracking sheet by OCA, by document, by
9 date or anything like that.

10 Q. Okay. So, you were just assuming that the trial counsel
11 was doing his job and the OCAs were doing their job?

12 A. Doing their jobs, right.

13 Q. Now, on 13 January 2011, the defense made its first demand-
14 -actually, first of two demands for speedy trial, correct?

15 A. That's the date. I'm sure there's a document in here that
16 you sent.

17 Q. It's not in here, but does that sound right to you?

18 A. I remember on, I believe, two occasions, specifically
19 stating a concern over speedy trial, yes.

20 Q. And does 13 January 2011 sound right to you?

21 A. I don't know the exact date, but it could be, yes.

22 Q. Okay. Now, you reviewed the defense's speedy trial demand,
23 correct?

1 A. Yes.

2 Q. And you spoke to the trial counsel about what the defense's
3 speedy trial demand meant?

4 A. Yes.

5 Q. And you understood at this time, and you even said on
6 direct that you understood that, after you took out the excludable
7 delays, you needed to have the trial within 120 days?

8 A. Right.

9 Q. You understood that the defense was asking that the
10 government, basically, to get the process rolling quicker in order to
11 get the client to their Article 32 hearing, correct?

12 A. That's correct.

13 Q. You understood that we were asking that because our client
14 was in pretrial confinement?

15 A. Yes.

16 Q. Now, obviously, the trial counsel, because the memorandum
17 talked about it, explained to you not only what R.C.M. 707 was, the
18 speedy trial right, but also Article 10. Did they talk to you about
19 that?

20 A. I don't remember specifically.

21 Q. Did he talk to you about the requirement of due diligence
22 on----

23 A. He did----

1 Q. ----their part?

2 A. ----roger.

3 Q. I'm sorry, sir, was that----

4 A. Yes, I'm not familiar with each individual article of the
5 UCMJ----

6 Q. I wouldn't expect you to be, sir.

7 A. Yeah, hooah.

8 Q. Okay. So, given that PFC Manning was demanding a speedy
9 trial at that point, did you ask the trial counsel when they believed
10 they would be able to start the Article 32 hearing?

11 A. No. Just in our updates--I just asked him if we were
12 continuing to move forward with the OCAs. I didn't ask him a
13 particular date when we would have to start--or when we would be able
14 to start again.

15 Q. All right. Sir, if you would, go to tab 2 page 16.
16 Actually, go to page 11, first, sir, of that same tab. And so, when
17 you take a look at 11, just to see what I'm--what it is, also take a
18 look at 16, too, as well, sir, and when you're done, just look up at
19 me.

20 [The witness did as directed.]

21 A. 11 to 16.

22 Q. Tab 11--page 11, start, and then page 16.

23 A. Page 16? Okay.

1 Q. All right. Sir, these are two other excludable delay
2 memoranda, correct?

3 A. That's correct.

4 Q. One is 18 March 2011 and the other is 22 April 2011?

5 A. Correct.

6 Q. Now, on the 18 March 2011 memorandum, that's the one on
7 page 11, you list for the first time as a basis for excludable delay,
8 "OCA consent to disclose classified information." Do you see that?

9 A. Yes.

10 Q. Now, what did "OCA consent to disclose classified
11 information" mean to you?

12 A. Once the information is determined or verified to be a
13 classification, the classification authority that owns it has to
14 release it or get us permission to disclose it.

15 Q. Now, did the trial counsel brief you on 18 March 2011 where
16 the OCAs were in the process of giving consent to disclose classified
17 information?

18 A. Specific consent? I don't remember.

19 Q. During the period from 15 February 2011 to 22 April 2011,
20 do you know what the OCAs were doing?

21 A. They were working on the classification reviews.

22 Q. And did you actually know that because you contacted the
23 OCAs or that's---

1 A. I did not.

2 Q. ----what you were being told by the trial counsel?

3 A. I did not contact the OCAs.

4 Q. I'm sorry?

5 A. I did not contact the OCAs.

6 Q. So, did you know that because of some independent
7 information or just because of what the trial counsel was telling
8 you?

9 A. Because of the information I was getting.

10 Q. From?

11 A. From the trial counsel.

12 Q. Okay. And what were they telling you, sir?

13 A. Well, we're continuing to press on with classification
14 reviews and disclosure requests and there were a multitude of things
15 that were delaying us there.

16 Q. Well, with regards to the consent to disclose classified
17 information, did they tell you--did they give you any specifics, like
18 they were about 50 percent of the way through?

19 A. I don't recall percentages or, like I said, I don't--maybe
20 you can ask me the question again, I think I----

21 Q. I just want making sure you have--are you done with your
22 answer?

1 A. Yeah, no, I remember specifically that--I know that as we
2 were getting information disclosed or permission from the OCAs to
3 disclose information, we were turning that over.

4 Q. Okay. But, at this point, when you list this as a basis,
5 you didn't receive anything from the OCAs to say that they were at 50
6 percent completion or they had x amount of documents left to review?

7 A. No.

8 Q. And, again, if I'm understanding correctly, you were
9 assuming based upon the trial counsel's representations to you that
10 the trial counsel was doing their job and the OCAs were doing their
11 jobs?

12 A. OCAs were doing their job, that's correct.

13 Q. Let's look at the 25 April 2011 memorandum; that's tab 3,
14 page 1, sir.

15 [The witness did as directed.]

16 A. Okay.

17 Q. All right. On that date, the government submits the first
18 of many requests for a delay of the Article 32 hearing, correct?

19 A. Correct.

20 Q. And the government requested the delay, you see, for their
21 purpose there--"The United States receives consent from all original
22 classification authorities to release discoverable classified
23 evidence and information to the defense."

1 A. Yes.

2 Q. Now, this delay was, basically, in order to obtain the OCA
3 classification reviews and the OCA's authorization to disclose the
4 charged classified information to the defense?

5 A. Yes.

6 Q. Let's talk about, first, the trial counsel's request for
7 authorization to disclose the charged documents to the defense, okay?

8 A. Sure.

9 Q. Now, the government provided you, as part of this
10 memorandum--you see where it says "enclosures" at the bottom, sir?

11 A. Yes.

12 Q. They provided you, as part of this memorandum, with
13 redacted copies of the OCA disclosure request dated 14 March 2011 and
14 the OCA classification review request dated 18 March 2011. Do you
15 recall that?

16 A. I don't recall, specifically. Is it in----

17 CDC[MR. COOMBS]: Could I have Appellate Exhibit 376b?

18 [The Court reporter handed the civilian defense counsel AE 376b.]

19 Q. Sir, I'm handing you what's been marked Appellate Exhibit
20 376b. If you can go ahead and just hold on to that, we're going to
21 be referring back to that a couple times. But, just for right now,
22 just kind of glance at it and when you feel you've looked at it

1 enough to refresh your memory, just look up at me and I'll ask the
2 remainder of my questions.

3 [The witness did as directed.]

4 A. Okay.

5 Q. No, sir, the OCA disclosure request, dated 14 March 2011,
6 those request authorization to disclose the charged documents to the
7 defense, is that correct?

8 A. Yes, it's a request for a consent to disclose classified
9 information.

10 Q. And did you review these documents because of the fact that
11 they were enclosures to the delay of the 32 request?

12 A. I don't recall specifically. I remember reviewing several
13 documents.

14 Q. Okay. But, for this, the 25 April delay of the 32, the
15 very first time that they asked to delay the 32, do you recall
16 looking at those documents because they were an enclosure to the
17 request?

18 A. I don't recall, specifically, reading these documents, no.

19 Q. All right. And is that because, in your mind, you think
20 too much time has gone by and you forgot, or do you think that you
21 never looked at these documents.

22 A. I don't recall. I mean, it's been a while.

23 Q. Okay. Who's----

1 A. I'm not----

2 Q. It's been a long time. I understand.

3 A. Yeah.

4 Q. The 14 March 2011 memorandum, there are three, particular--

5 one, the Department of State, Army G2, and to an organization we'll

6 just call OGA1 and they request consent to disclose classified

7 information to the defense. Is that correct?

8 A. Well, they're redacted in here. If that's what's in the

9 redaction, yes, that's correct.

10 Q. All right. If you look at one of the 14 March 2011

11 memorandums, there's a paragraph in which a trial counsel gives a

12 scope of the request. The request is "the classified information for

13 this request consists of classified digital evidence, forensic copies

14 of digital evidence, and copies of the documentary evidence collected

15 in this case that contain classified information identified as a

16 originating from," and then you fill in whichever organization it's

17 addressed to. Do you see where that's at?

18 A. That's in paragraph 4, yes.

19 Q. Okay. Did you ever ask the trial counsel why they waited

20 so long to request consent to disclose the classified information to

21 the defense?

22 A. No.

1 Q. Do you know that the Department of State actually gave
2 approval to disclose the requested classified information to the
3 defense on 29 March 2011?

4 A. Well, yes. I didn't know, specifically, Department of
5 State, but I knew that we were starting to get information back from
6 OCAs in March.

7 CDC[MR. COOMBS]: And, ma'am, that's in enclosure 25 of AE
8 339.

9 Q. Did you know that the Army G2 gave approval to disclose the
10 requested classified information to the defense on 30 March 2011?

11 A. Not specifically, no.

12 CDC[MR. COOMBS]: Ma'am, that's in enclosure 1 of email 0387.

13 Q. And did you know that OGA1 gave approval to disclose the
14 requested classified information to the defense, also, on 29 March
15 2011.

16 A. I was not familiar with that, specifically, no.

17 CDC[MR. COOMBS]: Ma'am, that's in the government's motion on
18 page 11.

19 Q. Did the trial counsel tell you that the OCAs gave them
20 consent to disclose the requested classified information to the
21 defense at the end of March 2011?

22 A. I don't recall the specific organization or information
23 that was disclosed, I just knew that we were--the information that I

1 got back from trial counsel was we were making progress from our
2 OCAs, we were getting information back, and we were getting
3 permission to disclose it and we were disclosing it.

4 Q. Okay. And so, just from your memory, do you recall whether
5 or not the trial counsel, at the end of March, said, "Hey, sir, we've
6 gotten authorization for a few of the main ones"?

7 A. We're getting--right, we're getting evidence back we're
8 able to disclose to the defense. My concern was making--my concern
9 was not to each page, each agency, my concern was that we were making
10 progress toward getting the mission completed, getting the
11 classification authorities complete and disclosure requests done.

12 Q. Okay. So, let's now talk about the classification reviews
13 by the various OCAs. If you look at that packet again, Appellate
14 Exhibit 376b, if you thumb forward a little bit, you'll see
15 memorandums that are dated 18 March 2011. You're probably going to
16 have to go a few because it starts off with the 14 March once and
17 then it goes to the 18 March.

18 A. Yeah, all right.

19 Q. And just whenever you find one, just let me know, sir.

20 A. Does it matter which one?

21 Q. It doesn't, no sir.

22 [The witness did as directed.]

23 A. Okay.

1 Q. All right sir. So, if you look at one that's dated 18
2 March 2011, you see where the trial counsel requests the OCAs to
3 finalize their classification review of the charged documents?

4 A. In the 18 March request, in the first paragraph, the
5 purpose, it states: "The prosecution team in the above referenced
6 case requests an appropriate authority finalize their classification
7 reviews."

8 Q. And "finalize" is stressed in the paragraph--or in--
9 correct?

10 A. Well, it's italicized or a different font, yeah.

11 Q. Okay. Now, in this request for a delay memorandum to you,
12 the government represented that, since 17 June 2010, the United
13 States has been diligently working with all the departments and
14 agencies that originally classified the information and evidence
15 sought to be disclosed to the defense and the accused. Do you recall
16 them making that representation to you?

17 A. Yeah, but I'm not sure on what the specific dates. I
18 remember the discussion, yeah.

19 Q. All right. And do you--as far as the date goes, from a--if
20 you--does the 17 June date sound right to you?

21 A. I couldn't tell you what the date is specifically, no, I
22 don't know.

23 Q. Okay.

1 A. We're dealing with about 300 dates here.

2 Q. No, I know, sir. A lot of time went by and a lot of
3 different dates, but--hold on one second and I'll get a document for
4 you. If you look back at tab 3, page 1, sir?

5 A. Okay.

6 Q. All right, sir, so, if you go to background, paragraph 2---
7 -

8 A. Uh-huh.

9 Q. Do you see the second full sentence starting off since 17
10 June?

11 A. Since 17 June 2010.

12 Q. Okay. So, the trial counsel made the representation to you
13 that they've been working on this since 17 June 2010?

14 A. Yes, that's what they stated in the document right here.

15 Q. All right. Just about time period from 17 June 2010 to the
16 date of this memorandum, 25 April 2011--and I'm not trying to stump
17 you, here, but do you realize that covers 313 days?

18 A. Yeah, I won't check your math.

19 Q. You'll trust me on that?

20 A. I believe you.

21 Q. All right, sir. So, during that 313-day time period when
22 the trial counsel then started to request that each of the OCAs
23 finalize their classification review. Did you ask the trial counsel

1 what they meant when they inserted the word "finalized" in their
2 memorandum?

3 A. No.

4 Q. Did any of the OCAs tell you that they were close to
5 finalizing their classification reviews at the date of this
6 memorandum?

7 A. I didn't particularly talk to any of the OCAs on where they
8 were in classifying their information.

9 Q. Did the trial counsel tell you that any of the OCAs
10 represented to them that they were close to finalizing their
11 classification reviews as of the date of these memorandums?

12 A. I don't recall, specifically, that they were at any
13 finalization of any classification reviews.

14 Q. Did any of the OCAs provide you or the trial counsel with
15 any estimated date of completion?

16 A. No.

17 Q. Did the trial counsel provide you, on their own, with an
18 estimated date of completion for each of the OCA's classification
19 reviews?

20 A. No.

21 Q. Did the trial counsel provide you with any information in
22 order for you to gauge how diligently each of the OCAs were working
23 in order to finalize the classification reviews?

1 A. I mean, specific--you know, I got one OGA working harder
2 than the other or one classification working hard than--no, I mean, I
3 just--like I stated before, I'm receiving a general update from the
4 trial counsel on "here's where we are in our classification reviews."
5 I'm not--you know, they're not giving me updates per OGA--you know
6 "this OGA or this agency is at 50 percent and expected to be at 75
7 percent on x day." We never had that discussion.

8 Q. All right, sir. And you were saying "OGA," I know you mean
9 OCA.

10 A. Well, each OGA has an OCA, but yeah.

11 Q. Okay. Got you, sir. So, with regards to that, then, if
12 they weren't providing you that detail, then you had no ability to
13 drill down and know how many people working on it?

14 A. No, I didn't know at any one time how many people in a
15 particular agency was working on the OCA request or the disclosure
16 request.

17 Q. And you obviously didn't know, then, whether or not they
18 were even working on it on a particular day or not?

19 A. No, I did not.

20 Q. Like if they were picking it up once a week or once a
21 month?

22 A. Yeah, I didn't know that.

1 Q. Now, the defense opposed this delay request by the
2 government, correct?

3 A. They opposed----

4 Q. On the 25 April----

5 A. They opposed all of them, so----

6 Q. All right. And if you would, sir, look at tab 3, page 3.
7 [The witness did as directed.]

8 A. This is your 26 April response back to me opposing the
9 delay of the Article 32 hearing.

10 Q. Now, in this delay request--this was actually--well, I'll
11 come back to that point, that's something on your direct--but in this
12 delay request, we're basically opposing the delay and we're asking
13 you, in order to minimize any need for further delay, to consider
14 substitutes or summaries for relevant classified information,
15 correct?

16 A. Correct, absolutely.

17 Q. And did you consider the defense's request?

18 A. I did.

19 Q. And did you talk to the trial counsel about the defense's
20 request?

21 A. I spoke to the trial counsel about it, yes.

22 Q. And what did the trial counsel tell you about what the
23 request for substitutions or summaries meant?

1 A. Well, he just explained that the request for a--there was a
2 potential that we could use a--summarize the classification and move
3 on without the particular classification reviews and disclosure
4 request if we had a--the way I understood it, if we had an expert
5 come in and testify to the fact that a group of documents or a hard
6 drive or a particular piece of evidence was classified we just----

7 Q. Okay.

8 A. Right.

9 Q. All right. And let's look now at your approval of that.
10 You approved of that on 29 April 2011. That's on tab 3, page 5.

11 A. Okay.

12 Q. And in that approval, you state that the Article 32
13 investigation--"the Article 32 investigation is delayed until the
14 earlier of the completion of the OCA disclosure requests and the OCA
15 classification reviews, or 25 May 2011." Do you see that, sir?

16 A. Yes.

17 Q. So, based upon your approval, you had, essentially, two
18 trigger points for the starting of the Article 32 hearing. One was
19 the completion of the OCA disclosure requests and the classification
20 reviews as one trigger point----

21 A. Yeah.

22 Q. ----and the other was 25 May 2011, correct?

1 A. Roughly a month from when this memorandum was signed,
2 correct.

3 Q. All right. So, if you got the OCA disclosure request and
4 the OCA classification reviews on 12 May, the 32 would start, right?

5 A. It could, yes.

6 Q. And if 25 May came and nothing else was done, then your
7 order was to start the 32?

8 A. Well--right.

9 Q. All right. So, let's look now at tab 3, page 6. On 12 May
10 you issued an excludable delay memorandum based upon this approval
11 stating that the period from 22 April 2011 until 12 May 2011 was
12 excludable delay under R.C.M. 707(c), is that correct, sir?

13 A. That's what's stated there, yes.

14 Q. And the memorandum here listed the following as a basis for
15 the delay: OCA reviews of classified information, OCA consent to
16 disclose information, the defense's 26 August 2010 request for the
17 results of the government's classification reviews by the OCAs, the
18 defense's 3 September 2010 request for appropriate security
19 clearances for the defense team, and access for PFC Manning--excuse
20 me, and access for PFC Manning and the government's 25 April 2011
21 request for delay. Is that correct, sir?

22 A. Uh-huh.

23 Q. These were the only bases you listed for the delay?

1 A. That are--yeah. It's listed right there.

2 Q. And, again, the trial counsel is the one who typed this for
3 you?

4 A. Yes.

5 Q. Did you have an opportunity if you wanted to?

6 A. I could, I guess, if I wanted to.

7 Q. As before, did you discuss this memorandum with the trial
8 counsel before signing it?

9 A. Yes.

10 Q. And one of the bases that was given by you is the defense's
11 request for an appropriate security clearance for the defense team
12 and access for PFC Manning, dated 3 September 2010?

13 A. That's correct.

14 Q. And you testified on direct that this was a basis because,
15 occasionally, a new expert was appointed to the defense team and
16 security clearances were required for them?

17 A. Yes.

18 Q. Now, this would not--this basis here, would not, in your
19 mind, hold up the 32, correct?

20 A. Well, if you had a defense team member that, then, required
21 a TS-SCI clearance that wanted to participate in the Article 32, that
22 would, potentially, result in a delay if he had to get a security
23 clearance.

1 Q. All right. You would expect the defense, then, to make
2 that additional delay request at that point, wouldn't you?

3 A. Well, it'd be--no matter who makes the request, the
4 individual can't participate unless they're--unless they have a TS-
5 SCI clearance, correct.

6 Q. All right. So, if the---

7 A. If it's your expert, you'd probably make the request,
8 right?

9 Q. Exactly. So, if the defense's computer expert didn't have
10 the requisite security clearance at that point, that fact, alone,
11 would not cause you to delay the 32, correct?

12 A. Well, it could if you want your expert to participate in
13 the Article 32.

14 Q. Absent a defense request, would that fact alone cause you
15 to delay the 32?

16 A. No.

17 Q. Okay. Now, let's look at tab 4, page 1, sir. This is a
18 memorandum dated 22 May 2011. The trial counsel submits--and on this
19 memorandum, it's second request for delay of the Article 32 hearing?

20 A. Correct.

21 Q. And in the updates section that trial counsel represents to
22 you that they were continuing to work with the OCAs to obtain the

1 necessary consent to disclose classified information and evidence to
2 the defense, correct?

3 A. That's correct.

4 Q. Did you ask the trial counsel what they meant by
5 "continuing to work"?

6 A. Not specifically. What do you mean "continued to work"?
7 Like I said before, I mean, we got a weekly update, as I discussed
8 this morning, from the trial counsel on, you know, "are OCAs making
9 progress? Are we continuing to move forward? Are we getting
10 information back and disclosure requests?" Yes, so we continued to
11 move on.

12 Q. All right. So, they didn't explain what "continuing to
13 work" meant to you?

14 A. In-----

15 Q. With specifics; stuff you could actually nail down----

16 A. No.

17 Q. ----and say what facts are?

18 A. We're continuing to work--you know, there was no discussion
19 of "we're going to continue to work 40 documents in this agency and
20 we're going to be done in 10 days. There's non--it was just a--
21 we're continuing to process and continued to work.

22 Q. All right. Now, sir, if you look at paragraph 4 request,
23 you see that the trial counsel requested a delay of the Article 32

1 until the earlier of the completion of the OCA disclosure request,
2 the OCA classification reviews, and authorization to disclose
3 protected, unclassified information for 27 June 2011.

4 A. Right.

5 Q. Did the government provide you with any indication how much
6 longer, at this point, when they submitted this request----

7 A. No.

8 Q. ----it would take to get the OCA classification reviews.

9 A. No.

10 Q. When you were considering the trial counsel's 22 May 2011
11 delay memorandum, how much longer did you believe, at that point, the
12 OCAs would need in order to complete their classification reviews?

13 A. I didn't have a set time in my head or what I thought it
14 was going to take for them to be done.

15 Q. So, you didn't have any particular time that you were
16 thinking about?

17 A. No particular time, no.

18 Q. Did you ask the trial counsel whether the OCAs would be
19 able to finalize their classification reviews as requested within 30
20 days?

21 A. No.

22 Q. Did you ask the trial counsel if anything could be done, at
23 that point, to expedite the process?

1 A. No, I felt like we were making progress.

2 Q. And what factual information were you basing "we were

3 making progress on"?

4 A. Based on the updates I was getting from trial counsel.

5 Q. And what factual----

6 A. Weekly discussion.

7 Q. What as far as facts?

8 A. I mean, like I said before, back to a number individuals we

9 were talking to in an agency; I didn't have any of those facts.

10 Q. Did the trial counsel, during this time period, ever ask

11 you for assistance in expediting the process?

12 A. No.

13 Q. Did it concern you, at this point that the classification

14 reviews had still not been completed?

15 A. No, not at this point.

16 Q. You told me when we talked about this that you didn't lose

17 sleep over the fact that the classification reviews were not

18 completed. You also told me that you were not fretting about the

19 fact that the classification reviews were not completed at this

20 point.

21 A. Not at this point, no.

22 Q. How many more months, at this point, were you prepared to

23 wait for the OCAs to complete their classification reviews?

1 A. I didn't have a set time frame in mind.

2 Q. So, nothing--no time period at the--on the wall where you

3 would say, "Look, at this point, if they don't have it done----

4 A. No.

5 Q. ----at that point, we're going to drive on"?

6 A. No.

7 Q. Did you ask the trial counsel, at this point, "If there's

8 anything you can do to but just sit and wait for the OCAs to bring

9 the classification reviews to you"?

10 A. No.

11 Q. Now, sir, being in the military, we all know that everybody

12 has some above them, correct?

13 A. Absolutely.

14 Q. And there's a chain of command and, so, you can avail

15 yourself to that chain of command when needed, correct?

16 A. Absolutely.

17 Q. And I know, sir, even though you down-play the power of an

18 O6 in the capital region, you're still an O6.

19 A. It's all relative, I mean----

20 Q. Yeah, I know, sir, and----

21 A. ----it depends on where you go.

22 Q. Having worked at III Corps as well, I know it's----

23 A. Hooah.

1 Q. ----all--you basically salute every time you walk anywhere
2 outside. But, sir, obviously you know people who are above you,
3 correct?

4 A. Absolutely.

5 Q. You could have, maybe, reached to the General Court-Martial
6 Convening Authority?

7 A. I could have.

8 Q. And you speak to him on----

9 A. A regular basis; sometimes more often than I'd like to,
10 yes.

11 Q. Yes, sir. And if you're speaking to him, obviously, about
12 this case, that would be something that he would listen to you, I'd
13 imagine?

14 A. He would.

15 Q. And even though, maybe, an O6 wouldn't have enough juice,
16 to use the term colloquially, to----

17 A. Right.

18 Q. ----get something done, a three-star could?

19 A. A three-star could, yeah.

20 Q. So, did you ever consider the possibility of using people
21 that you may know within your chain of command to start pulling some
22 strings?

1 A. That's certainly a possibility. At this point, you know,
2 I'm back to the discussion that I had earlier this morning, I don't
3 think--with the time frame that we're covering down on right now and
4 the particular agencies that we're dealing with and the individuals
5 that have--that are the classification authorities, these aren't, you
6 know, staffers that are signing--certainly staffers have to process
7 the documents, but these aren't just staffers that are signing the
8 classification reviews. These are senior executives and general
9 officers and, I mean, there's more than one thing on their plate on a
10 day-to-day basis in the NCR. So, I was comfortable that they had--
11 their staffs were appropriately working the action and the trial
12 counsel was appropriately working the action. So, I didn't feel like
13 I had a requirement to start, you know, walking up the chain of
14 command and--with the magnitude of the classification review that
15 needed to happen here and the importance of this case, I didn't think
16 that even me calling and asking a general officer for help was going
17 to move things along any faster.

18 Q. So you didn't think, because you're dealing with--I mean,
19 you're basically dealing with the government, right?

20 A. Well, yeah.

21 Q. I mean, we're dealing with just another arm of the United
22 States?

23 A. Well, we're dealing with--roger.

1 Q. So, we're talking to ourselves?

2 A. I don't know what you're----

3 Q. Well, I mean, like----

4 A. Different parts of the government, yeah.

5 Q. ----if you were saying, "Sir, hey, I'm dealing with
6 civilian agency or I'm dealing with something that is outside of the
7 United States government," that would be one thing, but we were
8 dealing with the United States government in this case, right?

9 A. Yes, the agencies are all U.S. government agencies.

10 Q. I mean, the United States government was who was
11 prosecuting my client.

12 A. Is, yes.

13 Q. So, at this point, I mean, it's just basically a
14 conversation among yourself and trying to get the OCA classification
15 reviews completed?

16 A. Conversation with myself?

17 Q. Among government people.

18 A. Those are the people that are involved.

19 Q. All right. So, at that point, sir, you never thought that
20 you would make a difference to run the issue up the chain, put your
21 command emphasis on it, maybe get the General Court-Martial Convening
22 Authority's command emphasis on it, in order to get this process
23 expedited?

1 A. No.

2 Q. Sir, let's go to page 4 on tab 4.

3 [The witness did as directed.]

4 Q. This is your approval of the government's second delay
5 request for the Article 32, correct?

6 A. Yes.

7 Q. And, sir, in that approval, you, again, state that the
8 Article 32 investigation is delayed until the earlier of the
9 completion of the OCA disclosure request and the OCA classification
10 reviews or 25 June 2011?

11 A. Yes.

12 Q. And the defense sent an email in opposition of this
13 request?

14 A. Yes.

15 Q. And, again, the defense requested that this time, as they
16 did in the past, should be credited to the government?

17 A. That's correct.

18 Q. Did you consider, at this point, not approving of the
19 prosecution's request?

20 A. Not approving this request? I may--I took considerations
21 of trial counsel--I took their considerations and mine and approved
22 it.

1 Q. Okay. At this point, did you consider the possibility of
2 saying, "Government, I'm going to put the time on you, though"?

3 A. It didn't have anything to do with whether it was the
4 government or anyone else, it had to do with the fact that we had to
5 get the classification reviews complete. A government agency did,
6 but----

7 Q. As far excluding delay under R.C.M. 707, did you consider,
8 at this point, the possibility of saying, "I'm going to grant it, but
9 I'm not going to exclude that time"?

10 ATC[CPT WHYTE]: Your Honor, I have to object. The witness
11 has already testified that he already considered the defense request.

12 MJ: Overruled.

13 A. Back to the--I mean, I don't understand. I just thought I
14 answered your question, but----

15 Q. I'm sorry, sir----

16 A. ----evidently not.

17 Q. ----I'll repeat it. Even though you said you considered
18 approving or not approving the delay request, did you consider, at
19 this point, even though you were going to approve the delay request,
20 saying to the government, "Hey, I'm going to approve your delay
21 request, but I am not going to exclude that time under R.C.M. 707,"
22 did you consider that second possibility at this point?

23 A. No.

1 Q. Now, at this point, if the OCA classification reviews had
2 been completed--so--at the point of 26 May 2011--if you found out
3 that all the OCA classification reviews were completed, would you
4 have ordered the Article 32 to resume?

5 A. If we had the reviews completed and we had the permission
6 to disclose the information to the defense so you could prepare for
7 the Article 32, yes.

8 Q. All right. So, in your mind, you needed both the
9 classification reviews and the approval to disclose the information?

10 A. Right.

11 Q. And, if you had the classification reviews and the defense
12 was asking to use substitutes or alternatives for the classified
13 information, would you have still excluded the delay--I mean--excuse
14 me--still held off on the 32 or would you have said, "Hey, let's go
15 ahead, do the 32, come up with some sort of substitution"?

16 A. It never presented itself so I didn't think about that.

17 Q. Okay.

18 A. That condition never presented itself.

19 Q. All right, sir. If that had been the case, do you think
20 you would have held up the 32?

21 A. I don't know.

22 Q. Sir, if you look at page 5, still on tab 4--and sir, before
23 I ask this question, I know I said to you, before, if you needed a

1 break, you just let me know, so I just wanted to know if you needed a
2 break.

3 A. No, I'm good.

4 Q. Okay, sir.

5 WIT: Everybody else good?

6 TC[MAJ FEIN]: Ma'am, may we have a 10-minute comfort break?

7 MJ: All right. We all set for a recess?

8 CDC[MR. COOMBS]: Yes, ma'am. I wanted to make sure.

9 MJ: All right. Why don't we go ahead and do that? We'll
10 recess the Court for 10 minutes.

11 **[The witness was duly warned and the Article 39(a) session recessed**
12 **at 1421, 8 November 2012.]**

13 **[The Article 39(a) session was called to order at 1439, 8 November**
14 **2012.]**

15 MJ: This Article 39(a) session is called to order. Let the
16 record reflect that all parties present when the Court last recessed
17 are again present in court. Please proceed.

18 [The cross-examination of Colonel Carl Coffman continued as follows:]

19 Q. Colonel Coffman, if you would take a look at tab 4, page 5?
20 [The witness did as directed.]

21 Q. This is your 17 June 2011 excludable delay memorandum,
22 correct?

23 A. That's correct.

1 Q. And the basis for this exclusion was the same that you gave
2 on your May memorandum, correct?

3 A. It appears that way, yes.

4 Q. And would you agree with me that, for the most part, this
5 memorandum looks identical to the May one, with the exception of the
6 day, for the most part?

7 A. Yes.

8 Q. Now, nowhere on this document is authorization to disclose
9 protected, unclassified information, correct?

10 A. That's correct.

11 Q. And do you know why that wasn't listed as a basis in your
12 excludable delay memorandum?

13 A. I don't recall, specifically, no.

14 Q. If, from your standpoint, if the only think that was
15 holding up the 32 was authorization to disclose protected
16 unclassified information, would you have held up the 32?

17 A. That was----

18 Q. The only thing that was outstanding.

19 A. ----was to disclose protected unclassified information?

20 Q. Correct, sir.

21 A. I don't think that would--no, I never thought about it. I
22 mean, like I said before, the condition never presented itself as an
23 option, so I didn't think about it.

1 Q. But sitting here, now, would that have been, in your mind,
2 a reason to hold up the 32?

3 A. I don't know, depending on what was, you know, probably in
4 the information.

5 Q. All right. If you--sir, look at the government's third
6 delay request. This is on tab 5, page 1; it's dated 27 June 2011.
7 [The witness did as directed.]

8 A. Yes.

9 Q. In your second delay approval, you required the prosecution
10 to provide you with an update no later than 25 June 2011. The
11 prosecution obviously failed to meet that deadline, correct?

12 A. Well, in written format, yes.

13 Q. All right. So, you're saying they came back to you before
14 this memorandum?

15 A. I'd say I talked to them about once a week--I talked to
16 Major Fein about once a week about the case.

17 Q. So, with regards to written format, they failed to meet the
18 25 June 2011 deadline?

19 A. Right, by 2 days.

20 Q. And the government, in this one, is requesting yet another
21 delay of the 32, correct?

22 A. That's correct.

1 Q. Did you ask the trial counsel why they had not submitted
2 their request to you in writing by 25 June 2011?

3 A. No, I had, you know, like I said, received a verbal update
4 and we had talked and I was comfortable with where they were.

5 Q. And in your memory, when you say, now, "verbal update,"
6 you're believing that that verbal update occurred on either shortly
7 before or right at 25 June?

8 A. I can't tell you the specific date it occurred, no.

9 Q. So, that could have also occurred after 27 June?

10 A. It could have.

11 Q. Now, the prosecution, once again, here, represented they
12 were continuing to work with the OCAs, correct?

13 A. Yes.

14 Q. And, at this point, did you ask the trial counsel what they
15 meant by "continuing to work"?

16 A. No.

17 Q. Did you ask the trial counsel why they hadn't sent out,
18 maybe, additional memorandums to the OCAs at this point?

19 A. No.

20 Q. Did you consider, yourself, writing to the OCAs?

21 A. No.

22 Q. Now, at the end of the government's request, the
23 prosecution states that it requests a delay of the Article 32 until

1 the earlier of the completion of the OCA disclosure requests, the OCA
2 classification reviews, authorization to disclose protected
3 unclassified information, and final review of the CID case file by
4 NSA and OGA, correct?

5 A. That's correct.

6 Q. Sir, did you ask the prosecution why it had not obtained
7 authorization to disclose protected unclassified information at this
8 point?

9 A. No.

10 Q. Did the prosecution or the trial counsel indicate to you
11 how much longer they felt they needed in order to obtain
12 authorization to disclose protected unclassified information to the
13 defense?

14 A. No, not specifically.

15 Q. At this point, when you were signing the memorandum, did
16 you have any understanding as to how much longer it might take?

17 A. Specifically, no.

18 Q. What was your understanding as to the remaining steps that
19 might be needed in order to accomplish the task of disclosing
20 protected unclassified information to the defense?

21 A. What do you mean by the remaining steps?

22 Q. Like did the trial counsel give you any idea like, "Sir,
23 there are four steps we need to achieve before we can disclose it.

1 We've achieved step one and two, we still have got three and four to
2 complete"?

3 A. No, like I stated before, the--what I'm tracking is a
4 general condition of where we are and the process of getting the
5 classification reviews complete, disclosure request complete.
6 Primarily, from what you're discussing here--and I was not tracking
7 by document or by agency what was or was not, you know, about to be
8 complete.

9 Q. Yeah, but this is for the protected unclassified
10 information. I was just wondering if----

11 A. It's the same thing. I might

12 Q. ----it was the same thing; kind of mete the bones of the
13 story as to what was needed and what was remaining.

14 A. No, not that I recall.

15 Q. Did you ask the prosecution why it needed to obtain a final
16 review of the CID file by NSA and OGA?

17 A. What they meant by that?

18 Q. No, just why they needed to obtain a review by NSA and OGA?

19 A. No.

20 Q. Did the prosecution ever explain to you why NSA and OGA had
21 to review the CID case file?

22 A. Well, what was on the CID case file was related,
23 potentially, directly to the two--the OGA and the NSA.

1 Q. And is that what the trial counsel explained to you, sir

2 A. Right, and then the way I understood it, from the
3 discussion was, there are elements in the--as the CID case file was
4 complete, there were elements in there that would require the NSA and
5 the OGA to review and authorize disclosure of that information.

6 Q. Okay, sir. And when they were explaining that to you, did
7 they tell you how much of the CID file needed to be reviewed by NSA
8 and OGA?

9 A. No, they didn't tell me that, you know, a particular number
10 of documents in there that each one had to review.

11 Q. Did you ask the trial counsel when they submitted the delay
12 request, why they felt that a delay of the 32 would be necessary in
13 order for this to happen?

14 A. I don't particularly know.

15 Q. Did you ask the prosecution whether or not the review by
16 the NSA and OGA of the CID file could take place after the 32?

17 A. No.

18 Q. Sir, if we go to tab 5, page 5.

19 [The witness did as directed.]

20 A. Okay.

21 Q. On 5 July 2011, you approved of the government's request
22 for a delay?

23 A. That's correct.

1 Q. And like all others, this was over the defense objection?
2 A. That's correct.
3 Q. Now, if you look to the following page, page 6, this was
4 your 13 July 2011 excludable delay memorandum?
5 A. Yes.
6 Q. And the basis for the exclusion that you prove, is the
7 exact seem memorandums, correct?
8 A. They appear to be, yes.
9 Q. And so, really the only thing that's changed on this
10 memorandum is, essentially, the date.
11 A. Yes.
12 Q. Now where on this memorandum is the authorization to
13 disclose protected unclassified information?
14 A. No.
15 Q. No where on this memorandum is final review of CID file by
16 NSA and OGA?
17 A. No.
18 Q. Do you know why not sir?
19 A. Particularly, no.
20 Q. Sir, if you go to tab 6, page 1.
21 [The witness did as directed.]
22 A. This is the trial counsel requesting its fourth delay of
23 the Article 32 hearing on 25 July 2011, correct.

1 Q. That's correct.

2 A. And the basis for their request is exactly the same as

3 their June quest?

4 A. Fundamentally, yes.

5 Q. And, again, here, the prosecution is requesting the delay

6 of the Article 32 until "earlier of the completion of the OCA

7 disclosure request, the OCA classification reviews, authorization to

8 disclose protected unclassified information, and final review of the

9 CID case file be NSA and OGA." Is that correct, sir?

10 A. Yes.

11 Q. Now, as with all others, of course, the defense opposed

12 this delay request.

13 A. That's correct.

14 Q. And if you look at tab 6, page 4.

15 [The witness did as directed.]

16 Q. Sir, this is the defense objection to the delay request.

17 Is that correct?

18 A. That's correct.

19 Q. And, sir, I know our objection to the delay request. The

20 defense pointed out that "The government had over a year to" complete

21 the classification review process, is that correct?

22 A. Yes.

1 Q. And so we're basically saying, "Look, you know, it's been a
2 year and nothing has been done and the delay request by the
3 government provide no specificity," is that correct?

4 A. Well, nothing--to say nothing has been done is not correct.

5 Q. We'll talk about that in a moment, but the delay request
6 don't provide specificity as to what has been done, if anything?

7 A. Yes.

8 Q. And, at this point, we also point out that the trial
9 counsel, at least in memorandum form, has failed to explain what
10 they've done in order to try to require the OCAs timely response to
11 complete the classification reviews, correct?

12 A. If you're referring to them specifically contacting the
13 OCAs, yes.

14 Q. Now, in this memorandum, the defense renews its speedy
15 trial request?

16 A. Yes.

17 Q. And, again, you understood that--what--you understood what
18 the defense was asking when they demanded a speedy trial?

19 A. Yes.

20 Q. And, at this point, did you understand that PFC Manning had
21 been in pretrial confinement for 362 days?

22 A. I had--not tracking the exact number of days, but close to
23 a year, yes.

1 Q. And given the amount of time and the amount of delay and
2 the fact that PFC Manning made two separate speedy trial demands, did
3 you ask the trial counsel, at this point, whether or not you even
4 needed the classification reviews in order to do the Article 32?

5 A. No, I did not ask him that, specifically.

6 Q. Did the trial counsel, at this point, ever express to you
7 the possibility of going forward with the Article 32 without the
8 classification reviews?

9 A. We had discussions--like I said, I don't--I mean, it's been
10 so long ago. We had discussions about--you know, we've had the
11 speedy trial discussions frequently and where we were in getting the
12 classification reviews complete.

13 Q. Okay. So---

14 A. I can't tell you if it was, you know, prior to this
15 memorandum or prior to the memorandum before this one.

16 Q. In those discussions, though, did the trial counsel ever
17 talk to you about the possibility of doing the Article 32 without the
18 classification reviews?

19 A. When--specifically, when defense requested it, originally,
20 but I made up my mind that, you know, we were going to have the
21 classification reviews done on the information and disclosure
22 requests complete before the Article 32.

1 Q. All right. So, when the trial counsel expressed that to
2 you, what do you recall from that conversation?

3 A. Well, I recall making the decision to continue on the due
4 course--the course that I was on already.

5 Q. But do you recall anything that trial counsel said to you
6 during that time period?

7 A. Not particularly, no. Verbatim----

8 Q. Do you recall why you made the determination that you had
9 to have the classification reviews prior to the 32 restarting?

10 A. Well, I wanted to have the classification reviews completed
11 and the disclosure request completed so the prosecution and the
12 defense both have the evidence in the proper classified format in
13 order to conduct a fair Article 32.

14 Q. Okay. So that was, in your mind, the reason why----

15 A. Right.

16 Q. ---you wanted to have those two? Even though the defense
17 was demanding speedy trial, requesting substitutions?

18 A. Right.

19 Q. At this point, would you agree with me that you had no idea
20 how much longer it would take for the OCAs to complete their reviews?

21 A. I didn't have a good idea of, you know, like 30 days, 45
22 days, 15 days, no, I did not.

1 Q. And besides trusting the OCAs to do their review, sir, what
2 reference points were you using to determine that the time it was
3 taking for them to complete their review was reasonable?

4 A. I didn't have a specific time period in mind. Every month
5 the conditions changed. Every--you know, as a request came in for a
6 delay, the condition changed. You know, a lot of the conditions were
7 the same. We were still requesting classification authorities
8 disclosure requests, but there were other things involved in there as
9 well. We were getting information back from these classification
10 authorities, we were getting information to disclose, so we were
11 making progress with the OCAs so I didn't--you know, at one point I
12 recall having a discussion that, you know, I was going to change
13 command in the summer of 2012, where were we going to be in the event
14 that, you know, my change of command rolls around? What are the
15 requirements now, as a Special Court-Martial Convening Authority?
16 You know, how does that transition from one commander to another?
17 You know, can we get this done prior to, you know, change of command
18 date?

19 But then, at that point, I'm just throwing a marker on the
20 wall and saying, "Okay, you know, that's just some arbitrary marker
21 and it's not based on any factual evidence or classification of
22 evidence at all. It's just based on a, you know, change of command
23 date that may happen, you know, sometime between May and August

1 sometime." So--I mean, that was--the only thing in my own head at
2 the time was just throwing that out there and I don't think I ever
3 discussed it with trial counsel, but what I did discuss with them,
4 though, is, you know, if in the event that I, potentially, change
5 command before this entire--you know, before this is--before the 32
6 is complete--or how far do we, you know, get down the road with this
7 before we move on?

8 Q. Okay.

9 A. But I was comfortable with--we were making progress getting
10 the information back that we needed to get back.

11 Q. All right. And your answer gives me a couple questions,
12 but I want to go back to my question that prompted your answer. What
13 reference points, sir, were you using from the OCAs to determine that
14 the time they were taking was reasonable?

15 A. I didn't have a reference point from an OCA.

16 Q. All right. And then, with regards to your answer of
17 saying, at least in your mind, you were debating that this stuff
18 wouldn't be done by your change of command sometime in the summer of
19 2012?

20 A. Right. That was--it could, through--if the Article 32--you
21 know, depending on which way that goes and if it does go to a--what
22 happens in the long term.

1 Q. I wanted to make sure I understood your answer. Were you
2 concerned about whether or not--if the OCAs hadn't completed their
3 stuff to where you could do the 32 by the time of your change of
4 command? Was that your concern?

5 A. No, I thought we were--we may potentially get there.

6 Q. Okay. All right. Would you agree with me, basically, that
7 you were trusting that the OCAs were doing what they were supposed to
8 be doing.

9 A. Yes.

10 Q. And, obviously, you don't always trust what other people
11 tell you, correct, sir?

12 A. Not always, no.

13 Q. Was there anything, at this point, preventing you from--
14 even though you trusted--verifying what they were doing?

15 A. I had confidence that the trial counsel was taking care of
16 that process.

17 Q. No, sir, my question, though, was even though you trusted,
18 was there anything preventing you from verifying----

19 A. From picking up a phone and----

20 Q. ----what the OCAs were doing?

21 A. ----calling an OCA? No.

1 Q. At this point, now that we are working, essentially, on the
2 third request to delay the 32 going into the fourth, were you
3 concerned that the OCAs were not completed with their review?

4 A. No, I was not.

5 Q. Sir, did you know that the trial counsel sent out
6 additional requests to the relevant OCAs on 28 July 2011 requesting,
7 this time, that they complete their classification review?

8 A. Yes, I'm familiar with that.

9 Q. Sir, if you could, go ahead and look at Appellate Exhibit
10 376b.

11 [The witness did as directed.]

12 A. This one?

13 Q. Yes, sir. And just find one of the memorandums, any one of
14 them is fine, that's dated 28 July 2011. It would probably be
15 towards the middle.

16 [The witness did as directed.]

17 A. I've got one right here.

18 Q. Okay, sir.

19 A. Any one in particular?

20 Q. No, any one of them will do.

21 A. Okay.

22 Q. All right, sir. In the trial counsel's memorandum to the
23 various OCAs, the trial counsel writes the following: "Under Article

1 10, UCMJ, when an accused is in pretrial confinement, the United
2 States is required to use reasonable diligence to continue--to--for a
3 motion on resolving criminal cases. See 10 U.S.C. section 810. The
4 only remedy for the--an Article 10 violation is dismissal of the
5 charges with prejudice. Additionally, the United States must ensure
6 it does not violate the accused's Sixth Amendment right to a speedy
7 trial. See *Barker v. Wingo* 407 US 414 [sic] (1972). All existing
8 and future delays by your department could severely hinder the
9 prosecution." Did you read this section of the trial counsel's
10 memorandums that they sent to the OCAs?

11 A. I remember specifically seeing this--I remember seeing the
12 memorandums, I don't--you know, I'm sure I read it--I mean, it's July
13 2011.

14 Q. Did you--and when you say, "it's July 2011," that means
15 that it was so long ago you don't recall?

16 A. Right.

17 Q. Okay. Did you ask the trial counsel about--from your
18 memory, did you ask the trial counsel about speedy trial issues based
19 upon seeing this memorandum?

20 A. I don't--we had a speedy trial discussion. I don't know if
21 this is what exactly prompted it or not, but we had that discussion
22 frequently.

1 Q. Given what you read in that memorandum and discussion that
2 you had with the trial counsel, were you concerned about the
3 possibility of violating PFC Manning's speedy trial rights?

4 A. I wasn't concerned about violating his speedy trial rights,
5 I was concerned about getting him a speedy trial.

6 Q. Okay. So, were you concerned that----

7 A. I was concerned that PFC Manning get a speedy trial, that's
8 correct.

9 Q. Were you concerned that the actions that were happening, or
10 the lack thereof, to get the classification reviews could be a
11 violation of PFC Manning's speedy trial rights?

12 A. I was discussing on that with trial counsel, whenever we
13 discussed speedy trial, you know, "Are we impinging on the accused's
14 speedy trial rights?"

15 Q. And so that would be "yes," that you were concerned about
16 it?

17 A. Yes.

18 Q. Did the trial counsel tell you that, as the date of that
19 memorandum, they gave the OCAs the date of 10 August 2011 to complete
20 their classification reviews?

21 A. I don't recall that specifically, no.

22 Q. Do you see that?

23 A. Yeah, it's stated, here, in the memorandum.

1 Q. Do you recall why the trial counsel would have listed 10
2 August 2011 as the date that they thought they could tell the OCAs to
3 complete their classification reviews?

4 A. I don't know.

5 Q. At this point, did the trial counsel express any
6 information to you in order to believe that that 10 August 2011
7 deadline was a reasonable one?

8 A. I don't remember that discussion, specifically, no.

9 Q. At this point, did you ever express to the trial counsel
10 that that 10 August 2011 deadline would be your deadline?

11 A. No.

12 Q. So you never--did you ever give the trial counsel a
13 deadline--a suspense of x date and we're going to go forward?

14 A. No.

15 Q. Sir, if you look at tab 6, page 5?

16 [The witness did as directed.]

17 Q. On 26 July 2011, you approved of the government's fourth
18 request for a delay?

19 A. Yes.

20 Q. And in that approval, you again state that the Article 32
21 investigation is delayed until the earlier of the completion of the
22 OCA disclosure requests, the OCA classification reviews and

1 authorization to grant protected, unclassified information, or 27
2 August 2011. Do you see that?

3 A. Yes.

4 Q. Now, this memorandum, even though you got a speedy trial
5 request by the defense, doesn't reference that. Do you know why?

6 A. No, I don't.

7 Q. If you would, sir, take a look at the following page, page
8 6.

9 [The witness did as directed.]

10 Q. This is your 10 August 2011 excludable delay memorandum?

11 A. That's correct.

12 Q. And, again, the basis for the exclusion was the exact same
13 as your May, June, and July excludable delay memorandums, correct?

14 A. Yes.

15 Q. And these were the only bases that you gave?

16 A. In this memorandum, yes.

17 Q. Nowhere in this document is authorization to disclose
18 protected, unclassified information?

19 A. No.

20 Q. Nowhere in this document is final review of CID case file
21 by NSA and OGA?

22 A. No.

1 Q. And, at the time that you signed this excludable delay
2 memorandum, did you have any idea how much longer the 32 would need
3 to be delayed?

4 A. No.

5 Q. Based upon what the defense had asked in their speedy trial
6 request for greater specificity, did you ever request from the trial
7 counsel, at this point, for greater specificity other than they're
8 continuing to work the issue?

9 A. No.

10 Q. And because you didn't do that, I guess you never asked
11 them to give you a list of things that needed still to be done?

12 A. No, I did not.

13 Q. Did you have any idea, at this point, what still was
14 outstanding in order to start the 32?

15 A. Specifically? No.

16 Q. Sir, let's take a look at tab 7, page 1.

17 [The witness did as directed.]

18 Q. This is a 25 August 2011 memorandum. It's the government's
19 fifth request for a delay of the Article 32 hearing, correct?

20 A. Yes.

21 Q. And, sir, the prosecution requested a delay of the Article
22 32 until, "The earlier of the completion of the OCA disclosure
23 requests, the OCA classification reviews, final determination of

1 derivative classifications, final review of the CID case file by NSA,
2 and release authority from relevant district court judges, or 27
3 September 2011." Do you see that, sir?

4 A. What paragraph?

5 Q. This would be in the request paragraph, paragraph 4, sir,
6 on page 2.

7 A. Yes. Okay.

8 Q. At the time that the trial counsel presented this to you,
9 sir, did they explain to you what final determination of derivative
10 classifications meant?

11 A. Not particularly, no.

12 Q. Did they indicate why they were--a delay would be needed in
13 order to obtain final determination of derivative classifications?

14 A. No, I don't remember that discussion, particularly.

15 Q. So, based upon them not explaining it or having that
16 discussion, you don't know how long it would take to get final
17 determination of derivative classifications?

18 A. No.

19 Q. Did the prosecution indicate to you, at this point, why the
20 delay would be needed for release authority from relevant district
21 court judges?

22 A. I don't particularly--no, I don't recall.

23 Q. Did they ever explain, at all, what that meant?

1 A. I seem to recall having that discussion, but I can't--you
2 know, like I said, I mean, it's been--I don't remember exactly what
3 the details of the discussion were.

4 Q. Okay. And that's because if--because of the amount of
5 time----

6 A. Right.

7 Q. ----that's gone by? Okay. So, because you can't recall
8 the discussion, if it happened, you obviously don't know what was
9 required to get the, I guess, release authority from the relevant
10 district court judges?

11 A. From the district court judges? No.

12 Q. Did you ask the prosecution, at this point, why it had not
13 completed a final review of the CID file by NSA?

14 A. No, not particularly.

15 Q. Did the prosecution or the trial counsel explain to you why
16 OGA had completed their review, but NSA had not?

17 A. They--like previously, they just stated--giving me an
18 update on the information that was coming and--or that we had
19 completed in that time period and then we were continuing to work
20 getting the information from the other OCAs and the OGAs.

21 Q. Sir, were you concerned, at this point, that another month
22 had gone by and you still had not received the OCA classification
23 reviews?

1 A. It was--we were--like I said before, we were continuing to
2 progress--we were continuing to make progress in this process. So, I
3 was--you know, you're always concerned about speedy trial and you're
4 always concerned about--especially when you have an individual in
5 pretrial confinement. But, in order to get the evidence properly
6 classified for PFC Manning to have a fair, complete Article 32, based
7 on evidence--and clear evidence, I didn't--I was not concerned that
8 it was not--I mean, I had a concern, but I wasn't--you know, at this
9 point--you know, time to lay a date on the lawn telling them, "Okay,
10 by next week, if it's not done, we're pressing on."

11 Q. Okay, sir. Obviously because of the date of this, did you--
12 -being 25 August and the suspense that the trial counsel had given to
13 the various OCAs of 10 August, did you ask the trial counsels why the
14 OCAs failed to meet the 10 August 2011 suspense date?

15 A. That--like I said before, we had, you know, weekly updates
16 from the phone. He would call and say, "Hey, here's where we are,
17 here's what we're doing," so I wasn't going back to a document and
18 referring to a date, specifically, and asking, "Hey, why are we--we
19 requested this on x day and they didn't respond back to us until 2
20 days later or whatever." As long as I was getting information back
21 from the trial counsel that we were making progress, we were
22 continuing to get information, the classification authorities were
23 reviewing and validating the information and getting the disclosure

1 requests complete and moving that information on to the defense as
2 well, then I was comfortable we were moving ahead.

3 Q. All right. But with regards to the suspense date, did you
4 ever have a conversation with the trial counsel about why the OCAs
5 missed that date?

6 A. I don't recall, specifically.

7 Q. Did the trial counsel tell you, at this point, whether or
8 not they had reached out and contacted the OCAs to ask them why they
9 had missed the suspense date?

10 A. No.

11 Q. What information--specific information were you relying
12 upon from the OCAs, either getting it from the OCAs or the trial
13 counsel, in order to determine that an additional 30 days was
14 reasonable?

15 A. It was what the trial counsel was--he'd submit a request, I
16 would talk to him about it, consider the request, and with the delay,
17 I would, you know, of course, send it to you and you would give me
18 your input and then I would make a decision. But, like I said, we
19 were continuing to make progress and we were continuing to get
20 information from the OCAs as we were moving down the road, here, so,
21 you know, I was comfortable we were moving ahead. I--like I said
22 before, if you're asking if I got a specific update from trial
23 counsel on, you know, this particular OGA or this particular intel

1 agency has 10 documents left to review and they're going to be done
2 in 14 days or they have five documents to review and they're going to
3 be done in 30 days, I never got to that level of detail with trial
4 counsel.

5 Q. All right. So, if I'm understanding your answer correctly,
6 you didn't have specific information from any OCA in order to
7 determine whether or not another 30 days was reasonable, you were
8 just being told that it's not done yet and they're continuing to work
9 it?

10 A. That's correct.

11 Q. So, again, you were basically, again, trusting that the
12 trial counsel----

13 A. Trial counsel, yes.

14 Q. ----was doing what they were supposed to be doing?

15 A. Yes.

16 Q. And you were trusting that the OCAs were doing what they
17 were supposed to be doing?

18 A. That's correct.

19 Q. Sir, if you look at page 5 of tab 7?

20 [The witness did as directed.]

21 A. Okay.

22 Q. This is where you, on 29 August 2011, approve the
23 government's fifth delay request, is that correct?

1 A. That's correct.

2 Q. And in that approval, you state that the Article 32
3 investigation is delayed until the earlier of the completion of the
4 OCA disclosure requests and the OCA classification reviews, final
5 determination of derivative classifications, final review of the CID
6 case file by the NSA, and authorization is granted to disclose
7 protected, unclassified information or 27 September 2011. Is that
8 correct?

9 A. That's what it says.

10 Q. And, obviously, sir, again, as with all other memorandums,
11 you didn't type it?

12 A. No.

13 Q. It was presented to you by the trial counsel?

14 A. Right.

15 Q. So, do you know why each of these things was listed as a
16 basis for a delay?

17 A. That was the discussion that we continued to have
18 throughout the delay process.

19 Q. Okay. So, with regards to authorization granted to
20 disclose protected, unclassified information, do you know why that
21 was listed in the memorandum?

22 A. Not particularly. I mean, I don't recall--when--like I
23 said, when I got the delay memos, he showed up in person, he gave me

1 a back brief or he emailed it to me, I printed it out, took it to my
2 desk, set down, he called, we talked through it, and, you know, I
3 determined whether--based on the information that we received back
4 from you as well--the normal due course--I would send it to you, ask
5 for your input, you'd give me the input, and then I would make the
6 decision. But, you know, I don't recall the specifics of every--you
7 know, every detail of every conversation that happened----

8 Q. So, during this time period----

9 A. ----for each delay memo.

10 Q. ----were you getting specific details like, "The OCA has
11 this much to do, we've got this much more of the protected,
12 unclassified information----

13 A. I never asked the trial counsel--like I stated before, I
14 never asked the trial counsel, through this process, if, you know,
15 "Okay, OGA 1 is--has--you know, how many documents does OGA 1 have
16 left to look at? How many files do you they have to look at? When
17 do you they think their date it's going to be completed for that
18 time?" I never asked for that information specifically.

19 Q. Why not?

20 A. Trial counsel told me they were continuing to work it and I
21 had confidence that trial counsel and the OCAs were working their
22 task.

1 Q. So, did there come a time when you wanted to ask that
2 question?

3 A. Not at this point. Like I said, we are continuing--as each
4 one of these conditions changed. We continued to get information
5 from the OCA's.

6 Q. What information--that is what I am trying to get at, what
7 information are you getting?

8 A. When I said--I do not know--yeah, I do not drill down into
9 every document that comes across here in a case file. "Hey, here is
10 the information we got, it is 14 documents." Okay, I got it. I do
11 not ask, "Okay, what are the 14 documents? And when did they release
12 them to us? And, when did they give us permission to disclose them?"
13 I did not get into that level of detail within the OCA's and the
14 number of documents or information that they had to process. That is
15 what I have a trial counsel on staff for.

16 Q. So, you did not think that that would be a requirement for
17 you in order to approve excludable delay?

18 A. Not by individual document, no.

19 Q. Or at least getting specifics from each of the bases as to
20 what is still outstanding, what do we need to do, how much longer?

21 A. We knew we had classification reviews that continued--that
22 we needed to continue to do, or I thought we needed to continue to
23 do.

1 Q. All right, sir, if you turn to page 6 of tab 7, on 15
2 September 2011 you exclude the period from the 10th of August to the
3 15 September date as excludable delay under R.C.M. 707(c), correct?
4 A. That is correct.
5 Q. And again, the bases that you listed the exact same that is
6 identified in the May, June, July and August excludable delay
7 memorandum?
8 A. That is correct.
9 Q. On the date of 13 September 2011, at this point you had
10 approved 147 days of delay of the Article 32. Did you have any clue
11 how much longer you would need to delay the 32?
12 A. Not a specific day, no.
13 Q. Did you have any idea how much was still remaining for each
14 of these things to be done that was listed as a basis?
15 A. A particular date on all, no.
16 Q. Sir, in your 29 August 2011 approval memorandum, you state
17 that trial counsel is required to provide you with an update no later
18 than 23 September 2011?
19 A. Do you have a page number we are on here?
20 Q. Yeah, if you look to, let's go to 29 August, that is tab 7,
21 page 5?
22 A. Okay.

1 Q. You see where you give the--it is in paragraph 2, the last
2 sentence, "The prosecution is required to provide me with an update
3 no later than 23 September 2011", do you see that?

4 A. Yes.

5 Q. All right, sir, now if you go to tab 8, page 1, what date
6 does the trial counsel give you an update?

7 A. It is 26 September.

8 Q. Do you know why the trial counsel failed to meet your
9 suspense date?

10 A. I do not recall particularly, no. Like I said, this is a
11 formal memorialized update. I am talking to him once a week.

12 Q. So from your memory here, much like other times, they
13 missed the suspense date for at least providing written format. Do
14 you recall any oral update?

15 A. I cannot tell you specifically what date a phone call came
16 in, you know.

17 Q. So, you do not know if they missed the 23 September
18 deadline?

19 A. I don't recall if, you know, if it happened before or after
20 26 September.

21 Q. All right, in this memorandum, the trial counsel requests a
22 delay of the 32 until, "Earlier the completion of the OCA disclosure
23 requests, the OCA classification reviews, final determination of

1 derivative classifications, receipt of signed protective orders from
2 the defense and properly portion-marked classified documents from
3 NSA, or 27 October 2011." Do you see that, sir?

4 A. Yes.

5 Q. Did the trial counsel indicate why the delay was needed for
6 receipt of signed protective orders from the defense?

7 A. Like I said, I do not recall the discussion specifically
8 on----

9 Q. On this issue?

10 A. ----Of this particular portion of the sentence, no.

11 Q. Do you recall any discussions from the trial counsel
12 regarding why the delay would be needed for properly portion marked
13 classified documents from NSA?

14 A. I do not, like I said, I do not recall the particular
15 discussion of that part of sentence, no.

16 Q. At any point, did you have an understanding of what
17 properly portion-marked classified documents from the NSA meant?

18 A. Particularly, no.

19 Q. Sir, if you go back to, not in this one, in the Appellate
20 Exhibit 376b, this would be toward the very end then, just find any
21 memorandum that is dated 7 September 2011.

22 A. Okay.

23 Q. And once you find one just let me know, sir?

1 A. Yeah, they are the last ones in here. Okay.

2 Q. All right, so do you see that memorandum?

3 A. Yes.

4 Q. And, that memorandum kind of looks a lot like the

5 memorandum that you sent out on 28 July, would you agree?

6 A. Yes.

7 Q. Basically again explaining the concern for speedy trial?

8 A. Yes.

9 Q. And, did the trial counsel tell you about the fact that

10 they sent this memorandum back out to the OCA's?

11 A. Like I said before, they were having, you know, updated me

12 on their interfaces with the OCA's and they were continuing to work

13 the classification reviews.

14 Q. Do you recall the trial counsel telling you about that?

15 A. I don't recall this 7 September memorandum specifically.

16 Q. Do you recall ever seeing that 7 September memorandum

17 before today?

18 A. I remember seeing memorandums sent to the OCAs, but I do

19 not--like I said, do not remember specific dates or if this was the

20 particular one that I saw. That was a year ago.

21 Q. Now, in the memorandum, sir, the trial counsel provides a

22 new suspense date for the OCA's of 21 September 2011 in order for

23 them to complete their classification reviews, do you see that, sir?

1 A. Yes.

2 Q. Now, the OCA's failed to meet that day, correct?

3 A. OCA--I mean, we are requesting information from the OCA's,
4 we do not, you know, we request. I am sure the information is
5 requested from the OCA but we do not typically, you know, in the
6 Army, task another agency or give them a--you know, we can ask for
7 help in getting something accomplished but were not going to call the
8 director of a particular OGA and tell him I need this document on my
9 desk by X date.

10 Q. But my question though, sir, was the OCA's failed to meet
11 that suspense date, correct?

12 A. Yes.

13 Q. And that the OCA's had over 15 months to complete the
14 classification reviews and missed two separate suspense dates, do you
15 recall if there ever was any----

16 A. It's a request, not it is not a suspense date.

17 Q. Okay, so you want to--you believed that was just a request
18 but not a suspense?

19 A. Right.

20 Q. Okay, so we will use your terminology. Now that the OCA's
21 had had over 15 months and failed to meet the request dates.

22 A. Right.

1 Q. Did you have any discussions with the trial counsel about
2 maybe just going on with the 32 without the classification reviews?

3 A. Oh, we had that discussions each time but my thinking was
4 we needed to continue on with the classification reviews and make
5 sure they were complete and thorough.

6 Q. What do you recall from the discussions? You said you had
7 it each time, so what facts do you recall from that discussion?

8 A. I do not remember specific facts. I mean, if you are
9 looking for, you know, we are back to the question of, you know I am
10 50 percent complete with 20 documents requested.

11 Q. Not the OCA stuff, but just the facts from the discussion
12 of, "Hey, we might just want to go ahead and do the 32 without the
13 classification reviews"?

14 A. I never specifically told the trial counsel that is when I
15 want to proceed.

16 Q. I might have misunderstood you; you could tell me if I did.
17 I thought you indicated that you had discussions about that every
18 time with the trial counsel?

19 A. We did, but I never told him that is what I wanted him to
20 do.

21 Q. Okay, what facts do you recall from that discussion with
22 the trial counsel?

1 A. I don't remember specifically the facts. I mean, we just
2 discussed the conduct of, you know, getting at a speedy trial and
3 moving on with the Article 32, and, you know trial counsel
4 recommendations.

5 Q. Did the trial counsel ever tell you whether or not they
6 researched the possibility of doing the Article 32 without the
7 classification reviews?

8 A. We had the discussion initially when we first started the
9 process but it was, you know, my decision to continue on until we had
10 all of the classification reviews done.

11 Q. So that----

12 A. Based on what trial counsel was telling me and what we
13 were, you know, getting back from the OCA's, you know as I said
14 before, as we continued on to the process we continue to get
15 information and more information back and you know, the dynamic
16 changed. The request and the reason for the exclusions remained the
17 same but there were variable differences that happened there that
18 weighed in the decision-making process.

19 Q. And you said you were getting more information back. What
20 information were you getting back?

21 A. We were getting information back from the OCA's.

22 Q. And that is what I have been trying to get to. What
23 information----

1 A. I am not--like I said, if trial counsel tells me, "Hey, we
2 are continuing to receive information from the OCA's in disclosure
3 requests", then okay, I am not going back and asking him, "Okay, did
4 you get 100 documents back or did you get 10 documents back, or did
5 you get five documents back? Which OCA did you get them from?" I
6 have got more than one thing on my plate as installation commander,
7 so the trial counsel is doing his job and I am comfortable that he is
8 doing that and we are seeking information and we are continuing to
9 press on.

10 Q. Okay, sir, so that I understand correctly, you understand
11 you are getting more information back, the more information for you
12 is just the trial counsel telling you that, "We are continuing to
13 work it"?

14 A. And we have also got, I mean, I am getting information that
15 we are--I don't know at what point he started updating me because of
16 discussions on the disclosed--the discovery information that we
17 started to forward on to the defense.

18 Q. Yeah, and I am just talking about the classification
19 reviews right now. So, you are saying we are getting more
20 information and more information from the OCA's and I get it that you
21 are saying that, "I did not ask for particular documents" but, when
22 you are saying, more information, what you are saying is just from
23 the trial counsel telling you?

1 A. Yes. The discussion between me and the trial counsel, yes.

2 Q. And when the trial counsel is having that discussion with
3 you, they are not saying facts to you like X number of documents,
4 this much longer, 50 percent done?

5 A. Not until they started, you know, at some point in here,
6 they started forwarding me information that got into a little more
7 detail, but you know, the number and volume of papers and the number
8 of items, disk, other evidence that was, you know, before we sent it
9 to defense, they started updating me on.

10 Q. Okay. But, with the OCA's, you are not getting those facts
11 at this point?

12 A. No. No details, facts, from OCA's, no.

13 Q. All right, sir, if you go to Page 4 of tab 8?

14 A. Okay.

15 Q. Do you see that this is the 20 September 2011 approval of
16 the government's request for delay of the 32?

17 A. That is correct.

18 Q. And, as with all others, it was over the defense objection?

19 A. Yes.

20 Q. Turn one more page to page 5. This is the 14 October 2011
21 excludable delay memorandum, correct?

22 A. Yes, that is correct.

1 Q. And sir, the basis of this exclusion was the exact same as
2 that May, June, July, August and September memorandums?

3 A. Fundamentally, that is correct, yes.

4 Q. I mean actually it is the same?

5 A. I mean, I could go back and look at it and verify the same-
6 -read the same, but I trust if you are telling me that that is the
7 case.

8 Q. Well, do you have any----

9 A. I mean--yeah----

10 Q. ----doubt that-----

11 A. No, I don't--there's no doubt in my mind. I mean, I've
12 signed them and looked at them and was familiar with it.

13 Q. All right. Now, again, because this is the excludable
14 delay memorandum, these are the only bases that you provide in the
15 memorandum?

16 A. In the memorandum? Yes.

17 Q. And, again, nowhere here is final determination of
18 derivative classification or receipt of signed protective orders from
19 the defense or properly pushing more classified documents from NSA?

20 A. No.

21 Q. So, none of those were a basis for excludable delay?

22 A. Not in here, no.

23 Q. I'm sorry, I didn't hear that?

1 A. No.

2 Q. Now, at this point, after 176 days of delay of the Article
3 32 by the trial counsel, if final determination of derivative
4 classifications, for example, was the only thing outstanding, I'm
5 confident you would have said, "Drive on with the 32," correct?

6 A. Well, there's potential for that, yes.

7 Q. And if release authority from the relevant district court
8 judges was the only thing holding it up, you would have said, "No,
9 no, no, drive on with the 32"?

10 A. We could have, yes.

11 Q. And would you have done that?

12 A. I don't know. I can't tell you what decision I would have
13 made under--right here under a different circumstance. I can tell
14 you the decision that I did make.

15 Q. Well--and I think the decision was really because of the
16 OCA classification reviews still being outstanding?

17 A. And--well, and the rest of it--items in the document, here.

18 Q. Did you weigh all of these equally?

19 A. Primarily, we were concerned--the primary concerns were the
20 classification reviews and the ability to disclose that classified
21 information to the defense.

22 Q. All right. So, those were the main---

23 A. Those were the two primary ones, yeah.

1 Q. All right, sir, if you look at tab 9, page 1?

2 [The witness did as directed.]

3 Q. This is your--actually, this is the trial counsel's 25
4 October 2011 request to delay the Article 32. This is their seventh
5 request?

6 A. That's correct.

7 Q. Now, in this request, the prosecution requests a delay of
8 the Article 32 until "the earlier of the completion of the OCA
9 disclosure requests, the OCA classification reviews, the final
10 determination of derivative classifications, and receipt of signed
11 protective orders from the defense," do you see that, sir?

12 A. Yes.

13 Q. Did the prosecution indicate why, at this point, they still
14 needed a delay for--to receive signed protective orders from the
15 defense?

16 A. I don't remember the specific discussion on that.

17 Q. Given the--I guess the--at this point, the 187 days of
18 delay of the Article 32, did you give any consideration to denying
19 the government's request to delay the 32?

20 A. No, at this point, I still thought it was important that we
21 had the classification authorities' reviews complete and the
22 disclosure request complete.

1 Q. Did you give any consideration, at this point, to, even
2 though you might say, "Oh, I'm going to grant the delay; I'm not
3 going to exclude the time because I want to, basically, put the
4 pressure on you to get this done?

5 A. No, I didn't.

6 Q. At this point, did you think, "You know what, I need to
7 drill down and get the actual fact as to what the OCAs are doing and
8 where they are at"?

9 A. No.

10 Q. Sir, if you look at page 5, tab 9?

11 [The witness did as directed.]

12 Q. This is your 27 October 2011 approval of the government's
13 request for delay, correct?

14 A. That's correct.

15 Q. And in that approval you state that the Article 32
16 investigation is delayed until the earlier of the completion of the
17 OCA disclosure requests and OCA classification reviews and receipt of
18 signed protective orders from the defense or 28 November 2011,
19 correct?

20 A. That's correct.

21 Q. Now, this memorandum looks a lot like and is, in fact,
22 identical to the previous memorandum?

23 A. Yes.

1 Q. Would you agree with me that, other than the date change,
2 that it's essentially----
3 A. It's fundamentally, the same.
4 Q. ----a cut and paste job?
5 A. Well, it's the same information on the memorandum, but the
6 date changed.
7 Q. Sir, if you look to Page 6, the following page?
8 [The witness did as directed.]
9 Q. On 16 November 2011, you excluded the period from 14
10 October 2011 to the date of the memorandum; is that correct?
11 A. That's correct.
12 Q. And, again, the basis for the delay was the same as your
13 May, June, July, August, September, and October memorandums, correct?
14 A. Yes.
15 Q. Also, on this day, 16 November, if you go to tab 10, page
16 1, the trial counsel requests, for the first time, that you order the
17 Article 32 to resume its work, is that correct?
18 A. Yes.
19 Q. And the trial counsel requests that you resume the--you
20 order the Article 32 to resume its work no earlier than 16 December
21 2011, in order for them to put into place what they call "OPLAN B,"
22 is that correct?
23 A. That's correct.

1 Q. Now, OPLAN B was apparently a 30-day OPLAN in order to set
2 up the facility and support structure for the Article 32 hearing?

3 A. That's a portion of it, yes.

4 Q. And then, I guess, you testified, on direct, other concerns
5 that you might have had for support?

6 A. Roger.

7 Q. Now, the trial counsel told you at the beginning of
8 November that they would be coming to you to request that the 32
9 resume its work; is that correct?

10 A. Yes.

11 Q. So, given the fact that you knew, at the beginning of
12 November, that they were going to come to you to say, "Hey, we're
13 going to ask that you order the Article 32 to resume its work," there
14 was nothing that prevented you from putting OPLAN B into play at that
15 point, correct?

16 A. We could have.

17 Q. And I think, as you said earlier, "Wherever we could gain
18 time, we would gain time;" is that correct?

19 A. Right.

20 Q. So, here would be a prime example of where you could gain
21 time if you knew, say, on the 2nd of November, "Trial counsel is
22 going to come to me in a couple weeks to ask, 'Let's go ahead and put

1 OPLAN B into place,' and when they do ask, we've got maybe a week or
2 two left and we can start the 32." Would you agree with me on that?

3 A. Well, that's a potential, yes.

4 Q. And more than a potential, there's nothing preventing you
5 from doing it?

6 A. There's nothing preventing you from doing it. I mean, it
7 wasn't--it wasn't like we held up everything in OPLAN B or everything
8 that was going to be required to execute the Article 32 just on that
9 date. I mean, some things had already been moving forward that were
10 going to be required to do.

11 Q. Well, OPLAN B didn't go into play until 16 November 2011,
12 right?

13 A. Right.

14 Q. And I think, as you said, had it been approved earlier, you
15 could have resumed the 32 earlier?

16 A. We could have, yeah.

17 Q. And, you know, I was just thinking outside the box, had we
18 put OPLAN B into play 30 days before 16 November 2011, we could have
19 probably started the 32 right on 16 November 2011.

20 A. Sure.

21 Q. Now, if you look on tab 10, page 49, this is your 3 January
22 2012 excludable delay memorandum. This, basically, excludes the time
23 period from the request to resume the 32 to 15 December and that was-

1 -there are a lot of bases listed there, but would you say that the
2 real basis was to put OPLAN B into play?

3 A. Well, we had--through the period of 16 November on, we
4 still had an outstanding--we still had one outstanding OCA
5 classification review that we hadn't had completed yet, but the trial
6 counsel came and said, "Hey, look, we're--we think we got a good idea
7 that this is actually going to happen on time. They should have this
8 done by the 1st of December; they told us they were going to have it
9 done by the 1st of December, so I think we can move on." The basis
10 of OPLAN B and the 30 days is that in the original planning cycle of
11 OPLAN B, when we were going through the mission planning process for
12 OPLAN B, the MDWJFHQJ3 guys--operations shop that puts this together
13 and comes back and says, "Hey, sir, we think it's going to take, you
14 know, 30 days to execute OPLAN B." I said, "Okay, that's good."

15 So, when I made the determination to restart the Article 32
16 is when OPLAN B went into effect and, at that point, it was the--all
17 the supporting units knew that they had 30 days in order to provide--
18 well, some of them had to provide it earlier, but the bottom line is
19 all the tasks to the subordinate units and the tasks to--and the
20 coordinating instructions all had to be complete by--they had 30 days
21 to complete them--the supporting units.

22 Q. All right.

23 A. I mean, I don't own all these guys.

1 Q. I understand that, sir.

2 A. Plus the facilities issues that we had.

3 Q. And as we said before, we could have put that OPLAN B into
4 play earlier, though?

5 A. In a week, I'm sure we could have.

6 Q. Okay. Now, that was pretty much my planned cross for you.
7 I do want to cover a couple things that you testified to on direct.

8 A. Okay. Sure.

9 Q. So now, you can see an ending in sight?

10 A. End, you know.

11 Q. All right, sir. So, if you go to tab 1, page 28 for a
12 moment?

13 A. You're moving backwards on me now.

14 Q. I'm going way back to the beginning, but this won't take
15 too long.

16 A. Tab 1, page 28?

17 Q. Yes, sir.

18 [The witness did as directed.]

19 A. Okay.

20 Q. Now, there was some confusion on whether or not, based upon
21 this 26 August 2010 request, whether we were asking for the 706 delay
22 in order to also complete the OCA classification reviews. I wrote
23 down that that's what I heard you testify to, but I wanted to clarify

1 whether or not that was, in fact, the case. If you look at paragraph
2 1, you see where we're asking to delay the 706 board until there's
3 some procedures in order to protect classified information.

4 Do you see that, sir?

5 A. Yes.

6 Q. Now, if you go down to paragraph 6, you see, we're just
7 requesting the results of the classification reviews, we're not
8 asking for the 706 board to be delayed until we get the
9 classifications reviews.

10 A. For OCAs. I'm not----

11 Q. I understood your----

12 A. ----I mean, if that's what I said--that's not--I mean, what
13 the--you were requesting information from the OCA--from the OCA
14 reviews.

15 Q. Yeah, I wasn't asking for the 706 board to be delayed----

16 A. Yeah, right.

17 Q. ----for that. Okay. There was a couple of other points if
18 you could bear with me for one second. If you go to tab 3, page 3,
19 sir?

20 [The witness did as directed.]

21 MJ: Where are you going?

22 CDC[MR. COOMBS]: Ma'am, tab 3, page 3.

23 MJ: Okay.

1 A. Okay.

2 Q. You see here, we objected to a delay request, but if you
3 look at paragraph 1, we're not asking, at this point, for the OCA
4 classification reviews in order to be prepared, we're just asking for
5 discoverable classification--excuse me, discoverable classified
6 evidence and information to the defense.

7 Do you see that?

8 A. Uh-huh.

9 Q. And, again, at least what I noticed on direct, it may seem
10 that you were saying we were asking for a delay in order to get the
11 classification reviews.

12 A. I think you were asking for--you were asking to be provided
13 the results of the classification reviews so you can properly prepare
14 for the defense.

15 Q. All right.

16 A. It's the way I read that.

17 Q. That paragraph 1?

18 A. Right. You're not requesting a review, you're requesting
19 the information from the classification authorities.

20 Q. Okay. So just----

21 A. In order to properly prepare for the defense.

22 Q. All right. So, not the OCA classification reviews?

23 A. Yes.

1 Q. Okay. Sir, if you look at tab 9, page 7.
2 [The witness did as directed.]
3 Q. There should be an e-mail from, then, Captain Fein to you.
4 A. It is.
5 Q. Sir, do you see where Captain Fein gives you an update
6 saying, "We received final approval to turn over classified forensic
7 data and did so today. A total of 329,055 pages."
8 You see that point there, sir?
9 A. Yes.
10 Q. Do you know what the classified forensic data consisted of?
11 Did the trial counsel explain that to you?
12 A. Not particularly, no.
13 Q. Did they explain, when they received authorization, to turn
14 that over?
15 A. I'm assuming it's pretty close to the time they turned it
16 over.
17 Q. So that's your assumption that it's close to this time
18 period?
19 A. I'm assuming so, yeah.
20 CDC[MR. COOMBS]: Okay. All right, sir, that's all the cross I
21 have, right now, for you. The government's going to have some
22 redirect and the military judge may have some questions.
23 MJ: Government?

1 ATC[CPT WHYTE]: Ma'am, can we just have a 15-minute comfort
2 break?

3 MJ: 15 minutes?

4 ATC[CPT WHYTE]: Yes, please.

5 MJ: All right.

6 [The witness was duly warned and the Article 39(a) session recessed
7 at 1542, 8 November 2012.]

8 [The Article 39(a) session was called to order at 1559, 8 November
9 2012.]

10 MJ: This Article 39(a) session is called to order. But the
11 record reflect that all parties present when the Court recessed are
12 again present in court. The witnesses also present. Government?

13 **REDIRECT EXAMINATION**

14 **Questions by the assistant trial counsel [CPT WHYTE]:**

15 Q. Sir, I just have a few--I promise you--a few questions just
16 on the redirect. So, earlier today, sir, you testified about the
17 process for when you received these requests for a delay.

18 A. Correct.

19 Q. Can you, just one last time, just explain that process of
20 when you were----

21 A. If, you know, a delay was requested, I discussed it with
22 the trial counsel. If it was a delay requested by the--well, by
23 either the trial counsel or the defense, in this case throughout the

1 whole process, try to confer with the other and go through the
2 process of understanding what was in the delay request and either
3 approving or disapproving it. It came in the form--well, for--if
4 you're referring to the eight delays from April to December,
5 specifically, typically what would happen is I would either get a,
6 you know, a hand-carried copy of the request for delay over to my
7 office and then Captain Fein--Captain/Major Fein in the process,
8 here, would show up and bring the delay to me, or it was emailed to
9 me. If it was e-mailed to me, I printed it, took it back to my
10 office, I'd sit down at the desk, called Ashden or arranged, through
11 the secretary, for us to get linked up, and then I would ask Mr.
12 Coombs for his opinion for his input on the delay and then make a
13 decision.

14 Q. Yes, sir. So when Major Fein or a member from the
15 prosecution team would come over, they would sit down with you, with
16 the request or, I guess, you said over the phone?

17 A. Yes.

18 Q. And talk with you about, for the most part, each single
19 paragraph in this request?

20 A. Oh, we would go through the request and, generally--
21 sometimes the--depending on what was in the request, if there was
22 some, you know, major changes to it, we would talk about the
23 classification authority and, specifically, the classification

1 reviews and disclosure requests. Those are the ones we figured were
2 going to take the longest and they did. But, other than that, we
3 would go through the document, he would say, "Okay, here are the
4 reasons for delay," and, you know, we'd talk over it and I forwarded
5 on to Mr. Coombs and Mr. Coombs would send me an e-mail back pretty
6 quickly, usually, and then I'd make a decision.

7 Q. So, within the request, trial counsel included updates?
8 The trial counsel would you brief you on these updates?

9 A. There are updates in the request.

10 Q. The trial counsel would brief you on those updates in the
11 requests?

12 A. Yes.

13 Q. When you were determining whether or not to approve----

14 A. Yeah, that's correct.

15 Q. Sir, just as an example, can you just turn to tab 8, page
16 1?

17 [The witness did as directed.]

18 Q. This is just one of the----

19 A. I'm pretty proficient at this. Okay.

20 Q. This is just one of the requests by the prosecution-----.

21 A. It is.

22 Q. ----by the United States. It's dated 26 September 2011.

23 A. That's correct.

1 Q. So, sir, safe to say that when you got this request, a
2 member from the prosecution team would come over and actually talk
3 about each update in this paragraph and brief you on each update?

4 A. Well, I would get an update--well, you know, in person or
5 over the phone depending on how it came, but, you know, I had the
6 document in front of me and I was having a discussion with Major
7 Fein.

8 Q. Yes, sir. But a member----

9 A. Or Captain Fein.

10 Q. A member from the prosecution team would discuss these
11 updates with you at that point?

12 A. Yes.

13 Q. Okay, sir. And these updates included actions of the
14 original classification authorities?

15 A. Yes.

16 Q. Okay, sir. So, I just want to--just to clarify, so, when
17 you testified on cross-examination that you, necessarily, didn't have
18 the details from the OCAs--the necessary--the facts from the OCAs,
19 was it that you didn't actually--that trial counsel did not brief you
20 on the details, or was it that you don't remember the exact details?

21 A. Well, I mean, I don't think that--there are some cases
22 where I didn't get into the specific details or didn't, you know,
23 require a specific details on some of these requests were some of the

1 OCA discussions, but, you know, it depended on the OCA and depended
2 on, you know, where we were at. And like I said, I don't remember
3 exactly every discussion that we had, you know, weekly on each OCA
4 and each, you know, document that was coming back from the OCA or we
5 disclosed to the defense.

6 Q. Sir, you can just, staying in tab 8, just move forward to
7 the accounting memorandum, page 5, dated 14 October 2011. And in
8 that memorandum, paragraph 3, you outlined the basis for your
9 decision for that period of time.

10 A. Yes.

11 Q. Is that correct, sir?

12 A. Uh-huh.

13 Q. And, sir, subparagraph E----

14 MJ: Where are you?

15 ATC[CPT WHYTE]: Tab 8, page 5.

16 MJ: Okay. The government request for a delay, dated 26
17 September.

18 Q. So, sir, did you consider the government's request for a
19 delay in granting the delay?

20 A. Well, yes.

21 Q. Fair enough, sir. So, you consider the updates and the
22 request in granting the delay?

23 A. In granting the delay, right.

1 Q. Okay, sir, and just last series of questions, when we're
2 talking about OPLAN B, and what did you mean that "OPLAN B could have
3 been initiated sooner"? What did you mean by that?

4 A. Well, that it could have been if we elected to, but, I
5 mean, we had already given all of the supported--or the supporting
6 units and the supporting individuals that were required to provide us
7 support that, you know, we would give them 30 days. Like I said, in
8 OPLAN B, the different tasks the subordinate units and coordinating
9 instructions, you know, had a different requirements on different
10 units, but, I mean--but--even in this room, right here, this--the
11 modification of this courtroom and upgrade of this courtroom--we
12 didn't wait until, you know--we didn't postpone anything. We--in
13 order to get it done and renovated, he started moving facilities into
14 the parking lot after we executed OPLAN B, but most of the soldiers
15 that you see here, supporting us, and don't belong to, you know,
16 Headquarters Battalion, USAG, a lot of them belong to MDW; some of
17 them belong to Fort Meade, so they certainly got to have the
18 opportunity to mobilize and get their--so their soldiers know what
19 they're required to do as well.

20 Q. Yes, sir. So, by saying that it could have happened
21 earlier, could it have happened early 2011?

22 A. Well, I mean----

23 Q. We--could it have----

1 A. It could have happened in 2010.

2 Q. So why did it happen--why did it start in November 2011,
3 then, sir?

4 A. Well, because when we got to the point--through the
5 planning process and developing OPLAN B, the development of OPLAN B
6 who thought they were going to have to have 30 days in order to put
7 this into place and get all the required other Soldiers support. And
8 we talked about facilities and the Soldiers around the area and there
9 were a lot of other things in there to consider as well. There was
10 transportation plans, confinement facilities, how we--moving PFC
11 Manning from the Regional Confinement Facility at Fort Leavenworth
12 doesn't, you know, happen, you know--we don't pick up the phone, call
13 and say, "Hey, in two hours be here to pick up, you know, the accused
14 to fly him to some confinement facility." We don't know what that
15 confinement facility is nor have we made arrangements there. So,
16 there are a lot of things factored into OPLAN B other than trailers
17 and Soldiers. You know, we could have executed it, you know, any time
18 through the process, but it just wasn't prudent to do.

19 Q. Yes, sir. He testified earlier that securing classification
20 reviews were important to your decision about when to start the
21 Article 32.

22 A. Right.

23 Q. Classification reviews were important?

1 A. Right, absolutely.

2 ATC[CPT WHYTE]: Sorry, sir, just one second. I think that's it,
3 but let me just make sure. Sir, thank you very much. The defense may
4 have some follow-up questions.

5 MJ: Defense, do you have anything further? I assume you're
6 finished.

7 CDC[MR. COOMBS]: Yeah, I have no additional questions.

8 MJ: Colonel Coffman, I have a few questions.

9 **EXAMINATION BY THE COURT-MARTIAL**

10 **Questions by the military judge:**

11 Q. Can you look at tab 3 on page 3?

12 [The witness did as directed.]

13 Q. It's the 26 April 2011 defense objection to the
14 government's request to delay the Article 32. If you look at
15 paragraph 2(a), it says that the defense is requesting you to order
16 the government to provide a substitute for a summary. Did you have
17 that authority to do that?

18 A. I--at the time, you know, whether or not I actually had the
19 authority to do that, I'm not sure. I thought I did, but I opted not
20 to do that. I'm not sure, Your Honor, whether or not I had the
21 authority to authorize that or not.

22 Q. I know this is a hypothetical, but let's just assume that
23 these delays continued past December and were beginning to approach

1 your change of command. I mean, was there, at all, any time in your
2 mind where you might have said, "Okay, at some point we've got to
3 go"?

4 A. Yes, Your Honor. Like I stated before, I mean, as we
5 continue to move through the process, I saw that we were making
6 progress, we are getting things done, more information is coming in,
7 so we were getting on with the process of getting the Article 32
8 started getting the classification review is complete. But, if you're
9 asking me if I have a specific, hard day on the wall, no, Your Honor,
10 I did not, but it was, you know--and--I'm not sure how to answer a
11 hypothetical question. I'm sure you know, at some point we've got to
12 draw it to a close, here. I mean, we--there are--there is still
13 potential information out there that we don't know that could have an
14 impact, but we opted to go--I made the decision to go the route that
15 we did.

16 Q. Okay. The other thing that I am still confused about a
17 little bit--I want to ask you some questions about that. The original
18 charges, in this case, were preferred on the 29th of May of 2010.
19 Are you familiar with the original charges?

20 A. The original charge sheet, Your Honor----

21 Q. I'm sorry, not the dates imposed. I think I have the wrong
22 date, here, it's the 5th of July. I was reading the confinement
23 date; it was the 5th of July of 2010.

1 A. 5th of July? Yes, Your Honor.

2 Q. Were they preferred before you got jurisdiction?

3 A. I don't recall if they were preferred before or after. I

4 know that I went in and we made some adjustments to the charges after

5 I had the case. I don't remember specific dates.

6 MJ: Counsel, can you give Colonel Coffman the original charges

7 as well as the charges that were preferred on the 1st of March 2011?

8 TC[MAJ FEIN]: Yes, ma'am.

9 [The trial counsel just directed.]

10 MJ: I'm not sure what exhibit--if they're appellate exhibits or

11 what they are.

12 TC[MAJ FEIN]: Ma'am, may we have a brief recess in place?

13 MJ: Yes.

14 TC[MAJ FEIN]: Ma'am, can we have a 5-minute recess not in place

15 to go print the original charge sheet that was dismissed?

16 MJ: All right. Let's go ahead and recess the Court. Come back

17 and knock on my door when we're ready to go.

18 TC[MAJ FEIN]: Yes, ma'am.

19 MJ: And make a copy for everybody.

20 TC[MAJ FEIN]: Yes, ma'am.

21 MJ: Court is in recess.

22 [The Article 39(a) session recessed at 1612, 8 November 2012.]

1 [The Article 39(a) session was called to order at 1629, 8 November
2 2012.]

3 MJ: This Article 39(a) session is called to order. Let the
4 record reflect all parties present when the Court last recessed are
5 again present in court. The witness is on the witness stand. Major
6 Fein?

7 TC[MAJ FEIN]: Ma'am, what has been now marked as Appellate
8 Exhibit 380 are three versions of charge sheets. The first--all in
9 one exhibit. On the top is the unredacted original and dismissed the
10 charge sheet. Behind that is the original and dismissed redacted
11 charge sheet. And then, behind that, Your Honor, is the redacted
12 current charge sheet.

13 MJ: All right. Thank you.

14 [Examination of the witness continued.]

15 Q. Colonel Coffman, do you have a copy of the original and the
16 new charge sheet?

17 A. Yes, they just handed it to me, Your Honor.

18 Q. Now, what--you became--do you remember when you received
19 jurisdiction on the case?

20 A. On the beginning of--the exact date, I believe, was the 3rd
21 of August.

22 Q. So, if I look at the original charge sheet----

23 A. Sorry, sorry, correction----

1 Q. ----with a preferral date of July 5th of 2010, was that
2 preferred before you got jurisdiction?

3 Q. Yes, ma'am.

4 Q. Okay. So, when you got jurisdiction, this came along with
5 the original charge sheet, is that right?

6 A. Yes, ma'am, to the best of my recollection.

7 Q. Is there any discussions--I'm looking at the original
8 charges and the original charges talk about a classified video of the
9 military operation films that are near Baghdad, on or about 12 July
10 2007. It talks about 50 classified Department of State cables, a
11 classified Microsoft Office PowerPoint presentation, a classified
12 video--well, it looks like the same thing--a classified State
13 Department cable entitled "Reykjavic 13," more than 50 Department of
14 State cables, and then more than a 150 diplomatic cables. At some
15 point there were new charges preferred on the 1st of March of 2011
16 and these have a more broad scope of charged documents. The combined
17 information data network exchange Iraq database 380,000 records, a
18 classified memorandum produced by the government agency, 20
19 classified records--more than 20 classified records from the combined
20 information network exchange Iraq database--I guess from looking at
21 this--is from--when you got the case, until the new charges were
22 referred, did the government know what--when did the government find
23 out about all this extra information that is charged in the

1 additional charges versus was charged in the original charges? Do you
2 have any idea?

3 A. Okay, I'm--but--so, you're asking me---

4 Q. Well, I'm looking at--you have the---

5 A. I'm sorry, I didn't understand the question, Your Honor.

6 Q. ----a small--well, you have an uncertain amount of
7 information in the original charges that the government is going back
8 to get classification reviews for. At some point, the government--you
9 become aware--the government becomes aware that there is more
10 information up there because they've now withdrawn the original
11 charge--or dismiss the original charges preferred the new ones
12 containing the information. I guess at--during--when you were doing
13 these delay requests, was there any discussion there about change or
14 new information requiring classification reviews?

15 A. Can--I mean--as I was going through the delay process, Your
16 Honor?

17 Q. Yes.

18 A. Yes, we had--well--specifically, on each one of these
19 different, you know, charges and specifications, like I said before,
20 I wasn't going through the process to try--I mean, I had the
21 specifications they are and generally knew what they were, but as far
22 as what the OCA's reclassifying what they were classifying, I wasn't
23 in--you know, tracking the details of, you know, "Hey, this

1 particular OGA has this many documents as many videos." I mean, have
2 a general understanding of what was in there, but I wasn't tracking
3 what--as far as what the OCA's had to review, I wasn't into the--into
4 discussion with the numbers of, specifically, documents that had to
5 be reviewed, when they were viewed, how many times they were--or, you
6 know the time it was going to take to review each document, if that
7 makes sense to you; maybe it doesn't.

8 Q. No, I'm just asking you, I guess--and when you're-- you had
9 periods of delay early on in 2010 for the R.C.M. 706 board, but part
10 of that justification for those delays was also the classification
11 reviews, right?

12 A. Well, we started the classification review process early--
13 not early--when we started--and we knew we had classified
14 information, read to get classification reviews.

15 Q. And it is government ever come talk to you about--it's not
16 in--I don't see it in any of these delay memorandums that, "Oh no, we
17 just found out about new information that we need to go back to these
18 various agencies and get it--get the classification review of
19 information we can ask for before."

20 A. Well, as--in the weekly updates I was having with the trial
21 counsel, he would say, "You know, as we find out--you know, as we
22 find information, then we have to go through the same process with
23 that," if that makes sense. I mean, we had new information and with

1 that new information comes the requirement to, you know execute a
2 classification review and, you know, get----

3 Q. To the trial counsel ever come back to you and say, "We are
4 continuing to work with the agencies. We've got new information that
5 we've got to have them look at"?

6 A. Those were the, you know, the weekly updates we were
7 receiving were included, you know, throughout the weekly updates.

8 Q. Is there any----

9 A. Like I said----

10 Q. ----documentation of that that you're aware of or is that
11 just what you remember from the conversations?

12 A. The documentation of the request for delays is what was,
13 you know, exactly what we've been through today. I mean, your
14 familiar with, but, you as--I'd say--is--we have phone calls and the
15 trial counsel is coming and having the discussion of, "Hey, look,
16 we're continuing to process this. Now we have, you know,
17 information--as we get this--new information comes up and we reveal
18 this as we're going through the investigation portion of this. We
19 have the same requirement."

20 Q. Did they talk to you at some point about, "Hey, the
21 original charges aren't--don't accurately reflect what we want the
22 charge. There's more out there so we're going to--we want dismiss
23 those and go forward with the additional charges"?

1 A. I don't know if they've released any today; there is, you
2 know, potential for that I'm sure.

3 Q. Yes, sir. Do you know if CID is investigating the site?

4 A. CID is, I think, investigating a potential leak.

5 Q. Okay, sir. And then, as far as--going back, now, to the
6 first line of questioning from the Court, and Private First Class
7 Manning was first transferred to your command, were all of the
8 disclosures in this case in the public domain at that point?

9 A. No.

10 Q. And was that a rolling process?

11 A. I mean, we continue to find things out, you know, as it
12 progressed and it matured. GMAC and does that include, sir, that CID
13 kept investigating?

14 A. Well--roger, CID continued to investigate.

15 Q. And, sir, how did you know that was going on?

16 A. Because the trial counsel told me it was happening.

17 Q. And were those updates--I mean, are those part of those
18 updates he talked about today?

19 A. Roger.

20 TC[MAJ FEIN]: Thank you, sir.

21 MJ: Mr. Coombs?

22 CDC[MR. COOMBS]: Yes, ma'am.

RECROSS-EXAMINATION

Questions by the civilian defense counsel [MR. COOMBS]:

Q. Sir, the original charges were preferred on 5 July 2010.
Can you verify that?

A. That's what's on the original charge sheet; it's correct.

Q. And then the additional charge sheet was preferred on 1
March 2011, correct?

A. That's correct.

Q. And you took--the case, basically, fell into your
jurisdiction on 3 August 2010?

A. Yes.

Q. Now, between the timeframe of, basically, when it got to
you, 3 August 2010, and 1 March 2011, do you know when, in that time
period, and the government was aware of what information they
believed PFC Manning may have----

A. I don't recall, exactly, a date, no.

Q. Do you recall why the 1 March 2011, was the time frame in
which there is a decision to prefer additional charges?

A. I don't recall, specifically, why that date was there.

Q. So, at this point, you can't say that that 1 March 2011
time-frame was because of newly discovered information?

A. That was just the date we preferred the--that we had the
new charge sheet, right.

1 Q. Okay. So, the information that you might have--from the
2 additional charges that are not present on the original charge sheet,
3 the information you could have gotten much earlier than the actual
4 referral date of the additional charges?

5 A. Yes, we could have, I guess.

6 CDC[MR. COOMBS]: Okay. Then, Your Honor, with regards to a
7 question on authority for substitutions, we would ask the Court look
8 at R.C.M. 405--or, excuse me, M.R.E. 505(d).

9 TC[MAJ FEIN]: Your Honor, if the Court is going to consider
10 this, we'd ask that this be briefed to the Court because Colonel
11 Coffman has already answered the Court's question about it.

12 MJ: I asked him based on his knowledge. If the parties would
13 like to submit their own views to the Court on that question, I'm
14 more than happy to take it.

15 CDC[MR. COOMBS]: Okay, Your Honor. Colonel Coffman, that's
16 all the questions I have. Thank you.

17 MJ: Okay. I think that's all I have. Is everyone finished?

18 CDC[MR. COOMBS]: Yes, Your Honor.

19 TC[MAJ FEIN]: Yes, ma'am.

20 **[The witness was excused and withdrew from the Courtroom.]**

21 MJ: All right. Please be seated.

22 **[All persons did as directed.]**

1 MJ: Just for the record--and the purpose of my question to
2 Colonel Coffman was to ask him whether he believed he had the
3 authority or not. Now, the legal question on whether he has
4 authority or not, the Court's question is: does a convening
5 authority who doesn't have--who is not the equity holder--have
6 authority to authorize substitutes without the permission of the
7 equity holder? So, if the parties want to brief that to the Court,
8 that's a separate issue. I was just asking Colonel Coffman what his
9 views were----

10 CDC[MR. COOMBS]: Understood, Your Honor.

11 TC[MAJ FEIN]: Yes, ma'am.

12 MJ: ----it's not mandatory. If you want to do it, go ahead.

13 CDC[MR. COOMBS]: Yes, Your Honor.

14 TC[MAJ FEIN]: Yes, ma'am.

15 MJ: Okay. Anything else we need to address with respect to the
16 speedy trial issue or any of the witnesses' testimony?

17 CDC[MR. COOMBS]: No, Your Honor.

18 TC[MAJ FEIN]: No, Your Honor.

19 MJ: The other outstanding thing I have is the government's
20 M.R.E. 505(g) motion. I've already signed the protective order for
21 the defense to look at the information. There are a number of
22 documents that are, potentially, involved; I've looked at some of
23 them. There is a vast sum of classified information that I will need

1 to go through that I have had the government make prints for me. I'm
2 prepared to do that this afternoon after we are complete and come out
3 with an order with respect to the relevant portion of that motion.

4 Defense, are you going to--I understand you're going to
5 have your forensics expert look at the information. With respect to
6 the relevance piece, are you going to be submitting anything further
7 in response to that?

8 CDC[MR. COOMBS]: No, Your Honor, just a--the exact same bases
9 that we gave previously for any 505(g)(2) requests just considering
10 the factors that the defense has listed previously.

11 MJ: All right. Now, the defense--you've e-mailed me something
12 that you have not filed. Do you want to continue with that posture?

13 CDC[MR. COOMBS]: No, Your Honor. We did not mark that as an
14 appellate exhibit.

15 MJ: And that's how you want to continue?

16 CDC[MR. COOMBS]: Yes, Your Honor.

17 MJ: Okay. So I will consider, when I look at the relevance
18 determinations, the factors that you outlined for me in the previous
19 505(g) motions. The protective order, you can go ahead and look at
20 and re-raise the metadata issues should you choose to do that and I
21 will go ahead and take a look at the documents *in camera* for the
22 relevance piece and issue an order, email it to the parties, and
23 address it on the record at the next session.

1 Is that acceptable for the parties?

2 CDC[MR. COOMBS]: Yes, Your Honor.

3 TC[MAJ FEIN]: Yes, Your Honor.

4 MJ: Okay. Is there anything else we need to address today?

5 TC[MAJ FEIN]: Yes, Your Honor, the United States would move for
6 a 45-minute recess in order for the defense and prosecution to
7 finalize the chronology--joint chronology, the interrogatories, to
8 put that on the record, and answer the Court's question about the OCA
9 participation.

10 MJ: Okay. And, at some point, we'll have to look at the case
11 calendar. Is someone from the government doing a draft case calendar
12 with the updates that we've already had, the change in dates, the 5
13 December, etc.?

14 TC[MAJ FEIN]: Well, that one change could be made very quickly,
15 Your Honor.

16 MJ: I believe that was the only change that we made.

17 TC[MAJ FEIN]: And we could have that done as well.

18 MJ: And the case calendar should also reflect--and it has
19 specifications for plea and maximum punishment litigation. Also,
20 conditional plea issues--just add that in there as well.

21 TC[MAJ FEIN]: For the next session, Your Honor?

22 MJ: Yes. As far as I understand that, the government is going
23 to--the government has to go through certain---

1 TC[MAJ FEIN]: Yes, ma'am.

2 MJ: ----hoops in accordance with Army Regulation 27-10?

3 TC[MAJ FEIN]: Yes, ma'am.

4 MJ: Is anything else that I have neglected to address that we
5 need to put--or add to the case calendar?

6 CDC[MR.COOMBS]: I don't believe so, ma'am.

7 TC[MAJ FEIN]: No, ma'am.

8 MJ: And Mr. Coombs, were you going to say something else, or
9 not?

10 CDC[MR.COOMBS]: No, ma'am.

11 MJ: Okay. Any objection to the 45-minute recess?

12 CDC[MR.COOMBS]: No, ma'am.

13 TC[MAJ FEIN]: No, ma'am.

14 MJ: All right. Court is in recess till 1730. If you need
15 beyond that, let me know.

16 TC[MAJ FEIN]: Yes, ma'am.

17 MJ: Court is in recess.

18 **[The Article 39(a) session recessed at 1647, 8 November 2012.]**

19 **[The Article 39(a) session was called to order at 1815, 8 November**
20 **2012.]**

21 MJ: This Article 39(a) session is called to order. Let the
22 record reflect all parties present on the Court last recessed are

1 again present in court. Major Fein, what have the parties, with
2 during the recess?

3 TC[MAJ FEIN]: Your Honor, during the recess, first, the Court's
4 classified protective order to go along with Appellate Exhibit 368
5 was marked and that is marked as Appellate Exhibit 381. And then,
6 also, a redacted unclassified version was also marked as 382.

7 MJ: Okay.

8 TC[MAJ FEIN]: Additionally, Your Honor, during the recess, both
9 parties agreed upon a joint stipulated speedy trial chronology that
10 has been marked as Appellate Exhibit 383.

11 MJ: Is it very different than the defense one that came to me
12 earlier?

13 TC[MAJ FEIN]: It is not much different, Your Honor.

14 MJ: Okay.

15 TC[MAJ FEIN]: However, in a moment, one difference will be
16 explained----

17 MJ: Okay.

18 TC[MAJ FEIN]: ----after this for the government's perspective.
19 Also, Your Honor, what's been marked as Appellate Exhibit 384 is the
20 Updated Defense Interrogatories that was discussed on the record this
21 morning.

22 MJ: And that's agreed to by both sides?

23 CDC[MR.COOMBS]: Yes, Your Honor.

1 MJ: Okay.

2 TC[MAJ FEIN]: And also, Your Honor, during the recess, you
3 signed the updated court calendar which has been marked as Appellate
4 Exhibit 385.

5 MJ: Have both sides had an opportunity to review the Court
6 calendar?

7 CDC[MR.COOMBS]: Yes, Your Honor.

8 TC[MAJ FEIN]: Yes, Your Honor.

9 MJ: All right. It is my understanding that there has been some
10 change in the dates of deliverables, but there's been no change in
11 the dates that were previously scheduled; is that correct?

12 TC[MAJ FEIN]: That is correct, Your Honor.

13 MJ: Okay. So the next session is scheduled to begin, then, on
14 the 27th of May 2012 at 1300? Is that accurate?

15 TC[MAJ FEIN]: Your Honor, that's 27 November.

16 MJ: 27--what did I say?

17 TC[MAJ FEIN]: May, Your Honor.

18 MJ: 27 November 2012. All right. So it's 1300 as was
19 previously scheduled?

20 TC[MAJ FEIN]: Yes, ma'am.

21 MJ: Okay. And all the other dates on the calendar have
22 remained the same?

1 TC[MAJ FEIN]: Yes, ma'am, and the times also--the standard time
2 of 10 o'clock starting on the record except that date on 27 November.

3 MJ: So, do the parties believe that we need to meet, at all, in
4 an 802 conference with respect to the scheduling order or is this
5 pretty accurate? I mean, is this an accurate way forward?

6 CDC[MR.COOMBS]: Yes, Your Honor.

7 TC[MAJ FEIN]: Yes, Your Honor.

8 MJ: So we don't need to meet?

9 TC[MAJ FEIN]: We do not need to meet; that is an accurate way
10 forward, Your Honor.

11 MJ: All right. Anything else?

12 TC[MAJ FEIN]: Your Honor, the only other issue from the
13 government's perspective is, based off, now, the agreed upon
14 stipulated chronology, the government does expect to file with court,
15 probably by--it will be by the end of next week--an additional
16 enclosure to the response to the speedy trial motion. And,
17 specifically, it will be an unfortunately large number of emails
18 between the defense and the prosecution about the different requests
19 the defense has submitted and the responses the prosecution gave. We
20 attempted to put that in the chronology that was stipulated to, but
21 it wasn't agreed upon so----

22 MJ: All right. When do you intend to have that to the Court?

1 TC[MAJ FEIN]: As of now, Your Honor, because Monday is a
2 federal holiday, we expect to have it by Thursday--delivery in
3 person.

4 MJ: Okay. Any issues?

5 CDC[MR.COOMBS]: No issues with that, although, under the local
6 rules, the government is free to submit a chronology of what they
7 would believe are additional days. That might prevent them from
8 having to give you a lot of the other documents, instead, just giving
9 you the dates they wanted to provide to the Court.

10 MJ: I think what you're looking for is to provide some
11 documentation to back up the dates. Is that you're looking----

12 TC[MAJ FEIN]: Absolutely, Your Honor; this is evidence that we
13 intend to use.

14 MJ: Is this all in the two volumes of miscellaneous emails that
15 I initially got?

16 TC[MAJ FEIN]: No, Your Honor, this is--these are just going to
17 be emails between defense counsel and prosecution back and forth.

18 MJ: And were the pulled from those two volumes or were they
19 coming from somewhere else?

20 TC[MAJ FEIN]: No, Your Honor, this is--there will be a few of
21 the emails we are going to provide you--are also--we'll identify if
22 you've already been provided certain emails--we'll have that clearly

1 identified, but the majority of these emails you have not seen or
2 been presented before, but they will be marked.

3 CDC[MR.COOMBS]: The defense has no issues with that, Your
4 Honor.

5 MJ: As I said earlier in the proceedings, during the recess I
6 have been conducting my 505(g) review on the documents at issue; I'd
7 already reviewed some of them with respect to the government's 505(g)
8 motion. I am almost finished reviewing them, so I will have an order
9 that will come out shortly, but my review has necessitated the need
10 for another *ex parte in camera* session. Which--can we do that after
11 we recess the Court today?

12 TC[MAJ FEIN]: Yes, ma'am.

13 MJ: About a half an hour after we recess the Court today?

14 TC[MAJ FEIN]: Yes, ma'am.

15 MJ: Is the Court reporter available to stay? Okay. Is there
16 anything else we need to address at this time.

17 CDC[MR.COOMBS]: No, Your Honor.

18 TC[MAJ FEIN]: No, Your Honor.

19 MJ: Okay. Court is in recess. I will advise--I'll send
20 someone out to advise the government when I'm ready to go on the *ex*
21 *parte in camera* proceeding.

22 TC[MAJ FEIN]: Yes, ma'am.

1 CDC[MR.COOMBS]: Your Honor, I apologize. Just for
2 clarification, the OCAs--I don't know if the government----
3 MJ: Oh, yes, they're right----
4 TC[MAJ FEIN]: Thank you.
5 MJ: The government has neglected to tell me----
6 TC[MAJ FEIN]: Your Honor, the five OCAs that--or the five
7 organizations are going to answer all the interrogatories to the best
8 of their ability.
9 MJ: Okay. You said five organizations. I thought there were
10 only four?
11 TC[MAJ FEIN]: There are, Your Honor. The prosecution has, sua
12 sponte, added one additional one. We have explained to the defense
13 why we've added one additional one they did not originally ask for.
14 MJ: Okay. And are you happy with that?
15 CDC[MR.COOMBS]: I have no issues with that, Your Honor.
16 MJ: Okay. So everybody is going to do--we're going to be doing
17 this by interrogatories, so, at this point, there's no reason for me
18 to have any additional rulings on the Defense Motion to Compel Speedy
19 Trial Witnesses?
20 CDC[MR.COOMBS]: That is correct, Your Honor.
21 TC[MAJ FEIN]: Yes, ma'am.
22 MJ: Anything else we need to address before we recess the
23 Court?

1 CDC[MR.COOMBS]: No, Your Honor.

2 TC[MAJ FEIN]: No, Your Honor.

3 MJ: Court is in recess.

4 [The Article 39(a) session recessed at 1820, 8 November 2012.]

5 [END OF PAGE]

Pages 2757 through 2768 of this transcript are classified “SECRET”. This session (8 November 2012, Session 2) is sealed for Reasons 2, 3, and 4, Military Judge’s Seal Order dated 17 January 2014 and stored in the classified supplement to the Record of Trial.

1 [The Article 39(a) session was called to order at 1319, 27 November
2 2012.]

3 MJ: This Article 39(a) session is called to order. Major Fein?

4 TC[MAJ FEIN]: Your Honor, all parties -- when the court last
5 recessed are again present with the following exceptions: Captain
6 Whyte is absent and Captain von Elten is present and will announce
7 his qualifications.

8 MJ: Proceed.

9 ATC[CPT VON ELTEN]: Your Honor, I am detailed to this court-
10 martial by Staff Judge Advocate, Colonel Bradley, United States Army
11 Military District of Washington. I'm qualified and certified under
12 Article 27(b) and sworn under Article 42(a), Uniform Code of Military
13 Justice. I've not acted in any way that might tend to disqualify me
14 in this court-martial.

15 MJ: All right. Thank you. And the remaining parties are the
16 same as were present when the court last recessed?

17 TC[MAJ FEIN]: Yes, Your Honor.

18 MJ: All right. Let us begin by going over everything that has
19 occurred since the last Article 39(a) session which was on the 7th
20 and 8th of November of 2012. All right. I believe at that time we
21 added Appellate Exhibit 379 which was the Prosecution's Request for
22 Leave until 8 December to Notify the Court of the Response to Defense
23 Original Classification Authority Interrogatories. That was dated on

1 7th of November 2012 and I gave oral approval, then, on the 8th of
2 November 2012 to the government's request for a 5 December 2012
3 extension on the actual response. Is that the parties'
4 understanding?

5 TC[MAJ FEIN]: Yes, Your Honor.

6 CDC[MR.COOMBS]: Yes, Your Honor.

7 MJ: And the prosecution moved on the 25th of October for leave
8 until the 10th of December to provide a detailed plan for maintaining
9 appellate exhibits that has been marked as Appellate Exhibit ----

10 TC[MAJ FEIN]: Your Honor, the Court's ruling was Appellate
11 Exhibit 362.

12 MJ: All right. And 359 was the prosecution's motion?

13 TC[MAJ FEIN]: Yes, Your Honor.

14 MJ: Okay. On the 26th of October 2012, I granted that request.
15 The defense did not oppose. Anything further from either side with
16 respect to that ruling?

17 CDC[MR.COOMBS]: No, Your Honor.

18 TC[MAJ FEIN]: No, Your Honor.

19 MJ: On the 26th of October 2012, the government moved the
20 court, pursuant Military Rule of Evidence 505(g)(2), in a classified
21 filing to authorize redactions and deletions from evidence the
22 government made available to the defense and to issue an additional
23 protective order precluding the defense or its forensic experts from

1 accessing the redacted or deleted information. The government's
2 motion was filed at Appellate Exhibit?

3 TC[MAJ FEIN]: Your Honor, it's the classified Appellate Exhibit
4 368.

5 MJ: Okay.

6 TC[MAJ FEIN]: And, Your Honor, the unclassified and redacted
7 version was filed at -- hold on please, Your Honor -- Appellate
8 Exhibit 365.

9 MJ: All right. On the 8th of November, I issued a ruling with
10 respect to that motion and the ruling is:

11 On 26 October 2012, the government moved the Court,
12 pursuant to Military rule of Evidence 505(g)(2), in a classified
13 filing, to authorize redactions and deletions from evidence the
14 government has made available to the defense and to issue an
15 additional protective order precluding the defense or its forensic
16 experts from accessing the deleted or redacted information. The
17 government posits that the redacted or deleted information is not
18 relevant, not favorable, not material to guilt or punishment and not
19 relevant and necessary for production under R.C.M. 703(f). The
20 government further proffers that the redacted or deleted information
21 will not be used by the government during any portion of the trial.

22 The government intends to limit defense access to the
23 redacted or deleted information by a software program restricting

1 access by a method called "privileging." The defense requests that
2 the Court review the proposed redactions and deleted information
3 using the factors the defense has requested the Court to reconsider
4 in its previous M.R.E. 505(g) responses. The Court considered those
5 factors in arriving at this ruling.

6 At issue in this motion is data and metadata. Earlier, on
7 8 November 2012, the Court issued the proposed protective order, the
8 defense and its forensic experts may review the information and
9 metadata under the parameters of the protective order. After the
10 review, the defense may re-raise any issues concerning the metadata
11 with the Court. With respect to the redacted and the deleted
12 information, the Court has examined all of the original and redacted
13 or deleted information and has held two *in camera ex parte* Article
14 39(a) sessions, on 8 November 2012, with the government in an
15 appropriate place for classified information proceedings to address
16 the concerns of the court with respect to that data. The proceedings
17 were recorded.

18 In accordance with the guidance issued by the court at the
19 second *in camera ex parte* Article 39(a) session, the Court finds that
20 the redacted and deleted information is not relevant to this case.
21 The Court further finds that disclosure of this redacted, irrelevant
22 -- classified, irrelevant information risks exposing intelligence
23 activities, sources and methods, and could reasonably cause damage to

1 the national security of the United States. No information or
2 evidence not disclosed to the defense by the government will be used
3 by the government or any government witness during any portion of the
4 trial. This includes rebuttal and Rule of Completeness.

5 The redacted and deleted substitution meets the
6 government's discovery obligations under *Brady* and R.C.M. 701(a)(6)
7 to disclose evidence tending to reasonably negate the guilt of the
8 accused to an offense charged, reduce the degree of guilty to an
9 offense charged, or reduce the punishment. The irrelevant classified
10 information that was redacted or deleted and not disclosed to the
11 defense is not material to the preparation of the defense or relevant
12 and necessary for production under R.C.M. 703(f). The substitution
13 is sufficient for the defense to adequately prepare for trial and
14 represents an appropriate balance between the right of the defense to
15 discovery and the protection of specific national security
16 information.

17 Ruling: The classified motion by the government to
18 voluntarily provide limited disclosure under M.R.E. 505(g)(2) is
19 granted in accordance with the guidance of the Court.

20 And subsequent to the 8th of November 2012, I believe the
21 government did send the Court a classified protective order, is that
22 correct?

1 TC[MAJ FEIN]: Your Honor, actually, what has been marked as
2 Appellate Exhibit 381, is a classified appellate exhibit. The Court,
3 on 8 November, signed a classified protective order and then on 14 --
4 because we were up here at Fort Meade -- on 14 November 2012, the
5 government sent a digital copy of that protective order to the
6 defense security experts via SIPRNET to the Court and the court
7 security officer.

8 MJ: All right. Thank you. Anything further on this issue from
9 either side?

10 CDC[MR.COOMBS]: No, Your Honor.

11 TC[MAJ FEIN]: No, Your Honor.

12 MJ: All right. On the 19th of November 2012, the government
13 asked the Court to sign an additional court order for a mental health
14 professional to a Dr. Jonathan Richardson. The defense joined in
15 that motion and the Court signed that order on the 19th of November
16 2012, directing Dr. Richardson to respond to all questions asked by
17 the prosecution in *United States v. PFC Manning* and regarding the
18 behavior, mental health, and suicidal ideations of PFC Manning that
19 he observed or treated from 1 June 2010 to 29 July 2010, and the
20 Court's order also extends to responding to all questions asked by
21 the defense. Compliance no later than 21 November 2012. And that
22 was marked as Appellate Exhibit 405.

1 TC[MAJ FEIN]: And, ma'am, just to correct one issue, Your
2 Honor, the defense actually motioned the Court for that protective
3 order and the government did not object.

4 MJ: Okay. Anything further on that?

5 TC[MAJ FEIN]: No, Your Honor.

6 CDC[MR.COOMBS]: No, Your Honor.

7 MJ: Also on the 19th of December, the -- excuse me, on the 14th
8 of November 2012, the government requested leave of the Court until
9 28 November 2012, to file a government motion to compel should they
10 desire to do that. The Court ruled on that motion on the 19th of
11 November 2012, as follows:

12 On 15 November 2012, the government requested leave of the
13 court until 28 November 2012, to file a motion to compel discovery
14 and to extend the deadline for the defense response to 5 December
15 2012. If the motion is granted, the government will not file a
16 reply. The deadlines on the current court calendar are: Government
17 motion to compel, 16 November 2012; defense response, 30 November
18 2012; and government reply, 5 December 2012. The defense does not
19 oppose.

20 The government request for leave of the Court until 28
21 November 2012 with response due on 5 December 2012 is granted.

22 And the government's motion and this ruling are marked as
23 Appellate Exhibit?

1 TC[MAJ FEIN]: Your Honor, the government's motion is marked as
2 Appellate Exhibit 388. The Court's ruling is marked as Appellate
3 Exhibit 398.

4 MJ: Thank you. And on 9 -- excuse me, on 16 November ----

5 TC[MAJ FEIN]: Your Honor, I'm sorry to interrupt. I was
6 incorrect. The Court's ruling on the previous -- for the previous
7 ruling is actually marked as Appellate Exhibit 389. I said,
8 previously, 398; it's 389.

9 MJ: All right. Thank you. And thank you for helping me keep
10 track of these. All right. On the 16th of November 2012, the
11 government requested leave of the court until 19 November 2012, to
12 file its response to defense interrogatories. The defense opposed
13 that and requested the Court to consider the filing as untimely for
14 Article 10 purposes. The prosecution response -- or the prosecution
15 redacted motion -- excuse me, the prosecution motion is?

16 TC[MAJ FEIN]: Your Honor, it's marked as Appellate Exhibit 399
17 -- is the government's request.

18 MJ: Okay.

19 TC[MAJ FEIN]: The defense's response is marked as Appellate
20 Exhibit 396 and the prosecution's reply to the defense's response,
21 the unclassified version, is marked as Appellate Exhibit 402 --
22 excuse me, that's the classified version and the unclassified,
23 redacted version is marked as Appellate Exhibit 401.

1 MJ: Okay. Mr. Coombs?

2 CDC[MR.COOMBS]: Our response is actually Appellate Exhibit 400,
3 Your Honor.

4 MJ: All right. Are the remaining exhibits accurately
5 reflected?

6 CDC[MR.COOMBS]: That is correct, Your Honor.

7 TC[MAJ FEIN]: Yes, ma'am.

8 MJ: All right. On the 20th of November 2012, the Court ruled
9 as follows:

10 On 16 November 2012, at 2345, the government filed --
11 requested leave of the Court until 19 November 2012 to file its
12 response to defense interrogatories. Defense opposed and requested
13 the Court to consider the filing as an untimely filing for Article 10
14 purposes. On 19 November 2012, the government filed a classified
15 reply and an unredacted -- and a redacted, unclassified reply. The
16 government also filed the response to defense interrogatories on 19
17 November 2012.

18 The Court has considered all the filing by the parties.
19 The government request for leave until -- of court until 19 November
20 2012, is granted. The Court will consider the timing and reasons for
21 the government's request for leave of the Court for the Article 10
22 speedy trial motion.

23 And my ruling is at Appellate Exhibit?

1 TC[MAJ FEIN]: 409, Your Honor.

2 MJ: All right. Thank you. This morning -- back in August, the
3 -- we litigated -- or the parties proposed draft instructions for me
4 to consider with respect to all of the charges and their
5 specifications. Today, this morning, I gave both sides a copy of my
6 proposed draft instructions and those have also been added to the
7 record as an appellate exhibit. Do both sides have a copy?

8 CDC[MR.COOMBS]: Yes, Your Honor.

9 TC[MAJ FEIN]: Yes, Your Honor.

10 MJ: All right. And it is at Appellate Exhibit -- that would be
11 410?

12 CDC[MR.COOMBS]: That is correct, Your Honor.

13 MJ: There have also been several new motions that have been
14 filed by the parties and some responses with respect to the plea
15 litigation. If the parties will recall, at the last session, the
16 defense had entered into proposed -- or had proposed pleas by
17 exceptions and substitutions to the Court and the Court had issued an
18 order asking the government to -- the government's position on
19 whether those were lesser included offenses or whether they were
20 different offenses or irregular pleas requiring convening authority
21 concurrence to be, in essence, referred charges. Also, the Court had
22 asked the government to come back with the convening authority's
23 position on whether the convening authority supported the conditional

1 plea aspect of the speedy trial issue of whether a plea would waive a
2 speedy trial under R.C.M. 707. And the government's response to
3 those motions are?

4 TC[MAJ FEIN]: Your Honor, what's been marked as Appellate
5 Exhibit 392, titled, "The Conditional Plea Notice to Court," the
6 government filed on 16 November, that the United States is in the
7 position, not -- though with the concurrence of the defense, not to
8 support a conditional plea at this time. And, included in the notice
9 filing is the government's proposed way the Court can go about taking
10 the plea and that would just be to take the plea after the completion
11 of the speedy trial litigation and that would allow Private First
12 Class Manning full rights under R.C.M. 707 which is the speedy trial
13 rule.

14 MJ: All right. And that was at Appellate Exhibit?

15 TC[MAJ FEIN]: Your Honor, the government's filing was at
16 Appellate Exhibit 392 and then the defense's response, Your Honor,
17 was at -- or is at Appellate Exhibit 393.

18 MJ: All right. And, Mr. Coombs, would you like to set, for the
19 record, the defense response?

20 CDC[MR.COOMBS]: Yes, Your Honor. The defense's position, which
21 is set out at Appellate Exhibit 393 is just simply that, due to the
22 fact that the R.C.M. 707 issues may not be preserved in the event of
23 a plea, that we would want to push the plea at a later date -- period

1 of time, after the Court, actually, has made a ruling on the speedy
2 trial motion.

3 MJ: All right. Thank you. All right. Just briefly, the
4 parties and I held an R.C.M. 802 conference before we came on today.
5 What that is, is where I discuss logistics and scheduling issues with
6 the parties before we come on the record and proceed. And this is
7 one of the issues that we discussed was the timing of how all of this
8 would work. The plea litigation, itself, that is whether the
9 proposed pleas are lesser included offenses that the Court can accept
10 and allow the accused to plead to or whether they are irregular pleas
11 or pleas requiring the convening authorities to concur for them to be
12 referred offenses. That will be litigated during this session as
13 well as the maximum punishments. The sides differed on some of the
14 maximum punishments so we'll be settling all of that during this
15 Article 39(a) session.

16 Now, with respect to the speedy trial issues, a plea of
17 guilty waives speedy trial under Rule for Court-Martial 707 for the
18 offenses to which the accused has pled guilty. Article 10 speedy
19 trial motions that are litigated prior to plea are not waived by a
20 plea. The defense -- if the Court accepts the plea before the speedy
21 trial motion is litigated, the 707 -- R.C.M. 707 piece of it will be
22 waived, so the court will entertain a request by the parties to issue
23 a speedy trial ruling before accepting a plea by the accused, should

1 the Court rule that the accused can enter those pleas, if they're
2 regular pleas or lesser included offenses authorizing the accused to
3 so enter the plea.

4 So, at this point, it looks like -- this isn't etched in
5 stone yet because we have to meet to discuss other logistics of the
6 trial, but if the trial calendar remains as is, then, the speedy
7 trial litigation would be finalized the week of the 10th through the
8 14th of December with the parties making their final arguments with
9 respect to the speedy trial; the court would take that issue under
10 advisement and the goal would be to have the speedy trial ruling
11 resolved by the follow-on session of the 14th through the 18th of
12 January. And, should the Court rule that the accused's speedy trial
13 rights were not violated, then the plea litigation -- the entry of
14 pleas would follow at that time. Is that the parties' understanding
15 of what we discussed?

16 CDC[MR.COOMBS]: That is correct, Your Honor.

17 TC[MAJ FEIN]: Yes, Your Honor.

18 MJ: Okay. And that assumes no additional litigation regarding
19 the speedy trial motion or any motions to compel or any of that are
20 added to the calendar because, if that occurs, then that may cause
21 for -- cause some delay to the proceedings.

22 CDC[MR.COOMBS]: Correct, Your Honor.

23 TC[MAJ FEIN]: Yes, Your Honor.

1 MJ: In addition to that, the government has filed a motion that
2 the Court reconsider one of its findings in Appellate Exhibit ----

3 TC[MAJ FEIN]: Your Honor, the motion, itself, is marked as
4 Appellate Exhibit 395 and it's asking the Court to reconsider a
5 single line in a finding that's -- it was a finding in Appellate
6 Exhibit 58.

7 MJ: All right. And that line was that the prosecution
8 "disputed that it was obligated to disclose classified *Brady*
9 information that was material to punishment only" on the basis that
10 this finding was not supported by the record?

11 TC[MAJ FEIN]: Yes, Your Honor.

12 MJ: The defense filed a response to that?

13 CDC[MR.COOMBS]: Yes, Your Honor. One moment, Your Honor.
14 Thank you. Yes, we did, Your Honor, at Appellate Exhibit 396. Our
15 position was that the government's request under R.C.M. 905(f) was
16 untimely as well as if the Court does, in fact, grant the request for
17 reconsideration, it would obviously have a response to the
18 government's assertion.

19 MJ: So, in addition to the plea litigation on the propriety of
20 the pleas, the Court will decide during this session whether it will
21 reconsider this ruling. If the Court does decide to reconsider that
22 line of the ruling, the Court will build into the trial calendar an

1 opportunity for the parties to come back with a substantive response
2 to the reconsideration.

3 CDC[MR.COOMBS]: Understood, Your Honor.

4 MJ: And the plan for these issues is going to be -- with
5 respect to the plea, at some point during the witness presentation
6 for the Article 13, maybe at the end of one of the days, we will go
7 forward and litigate that motion so the parties have the Court's
8 ruling with respect to the plea issues well in advance of the close
9 of this session in case there are any addition discussions or changes
10 to the trial calendar that need to take place. The -- another
11 decision the Court will make during this session is whether to
12 reconsider this ruling or not.

13 TC[MAJ FEIN]: Your Honor, also, another correction -- it's --
14 the motion to reconsider was a finding in Appellate Exhibit 68 not
15 58.

16 MJ: Thank you. And the defense has filed a motion to compel
17 witnesses and I believe the government also responded to the defense
18 witness list on the 16th of November and the motion to compel was on
19 the 23rd of November 2012.

20 CDC[MR.COOMBS]: The motion to compel, Your Honor, is Appellate
21 Exhibit 408.

22 TC[MAJ FEIN]: And, Your Honor, the -- and if we may, also,
23 what's been marked as Appellate Exhibit 387 was the defense -- on 12

1 November 2012, the defense filed a witness list for sentencing only.
2 Then, the government -- and, on 16 November, what's been marked as
3 Appellate Exhibit 403, is where the government responded to the
4 defense's original witness list and then they've done a defense
5 motion to compel. The government has not filed a response to the
6 motion to compel.

7 MJ: Okay. So the government's response is at Appellate Exhibit
8 403. What's the defense's original witness list?

9 CDC[MR.COOMBS]: It would have been Appellate Exhibit 344, Your
10 Honor, and then, as the government said, we also filed Appellate
11 Exhibit 387 which was in the event of a sentencing-only case. Then
12 the government filed its response -- or its denial of certain
13 witnesses and that prompted the motion to compel at Appellate Exhibit
14 408.

15 MJ: So 377 was the original sentencing-only witness ----

16 CDC[MR.COOMBS]: No, Your Honor, 340 -- I'm sorry, sentencing-
17 only?

18 MJ: Yes.

19 CDC[MR.COOMBS]: Was 387.

20 MJ: 387? Okay. Good. And, I'm sorry, one more time, the
21 merits and sentencing ----

22 CDC[MR.COOMBS]: Yes, Your Honor, that's at Appellate Exhibit
23 344.

1 MJ: And that was filed on the 15th of October?

2 CDC[MR.COOMBS]: That is correct, Your Honor.

3 MJ: And the government hasn't filed a reply, yet, to the
4 Defense Motion to Compel Production of Witnesses. That motion will
5 be litigated at the next session on the 6th -- or the 10th through
6 the 14th of December. Is that the parties' understanding?

7 CDC[MR.COOMBS]: Yes, Your Honor.

8 TC[MAJ FEIN]: Yes, Your Honor.

9 MJ: In addition, the government has filed a motion *in limine* to
10 exclude motive evidence that was filed on the 16th of November 2012.

11 TC[MAJ FEIN]: Yes, Your Honor, that's been marked as Appellate
12 Exhibit 394.

13 MJ: All right. And responses to motions that were filed on the
14 16th of November 2012, are due on the 30th of November 2012m and all
15 of these motions will be litigated at the next session which is the
16 10th through the 14th of December so the defense has not yet filed a
17 response to that motion. Both parties have filed further motions for
18 judicial notice on the 16th of November 2012 as well. The
19 government's motion is?

20 TC[MAJ FEIN]: Your Honor, the Government Motion for Judicial
21 Notice is what's been marked as Appellate Exhibit 398.

22 MJ: Now, there are numerous enclosures to that motion. Are
23 those included in the record on a CD?

1 TC[MAJ FEIN]: We'll verify after this, Your Honor.
2 MJ: Please ensure they are.
3 TC[MAJ FEIN]: And if they're hard copy, we will do a CD.
4 MJ: We can do hard copy too, you're just going to have a lot of
5 paper in there.
6 TC[MAJ FEIN]: Yes, ma'am.
7 MJ: And the defense also filed motions for judicial notice?
8 They filed two?
9 ADC[CPT TOOMAN]: Yes, Your Honor. The first is at Appellate
10 Exhibit 390 and the second is at 397.
11 MJ: And which one is the first? Is that the first ----
12 ADC[CPT TOOMAN]: The first one is the House Resolution 553.
13 MJ: And that was Appellate Exhibit -- I'm sorry?
14 ADC[CPT TOOMAN]: 390, ma'am.
15 MJ: 390? Okay.
16 ADC[CPT TOOMAN]: And then 397 is judicial notice of the damage
17 assessments.
18 MJ: All right. And, again, those responses -- the responses to
19 those motions are due on the 30th and those will be litigated at the
20 next session. And I also note at Appellate Exhibits 406 and 407, the
21 prosecution did respond to the defense interrogatories for speedy
22 trial. The redacted version is at Appellate Exhibit 406 and the
23 classified exhibit is at Appellate Exhibit 407. And those were filed

1 on the 19th of November 2012. Are there any other housekeeping
2 issues that the Court has failed to address?

3 CDC[MR.COOMBS]: One from the defense, Your Honor, Appellate
4 Exhibit 404. This was just simply notice provided to the Court of
5 the potential filing and motion to compel based upon the responses to
6 the interrogatories, both by the government and the OCAs.

7 MJ: Okay. Thank you.

8 TC[MAJ FEIN]: Your Honor, one new appellate exhibit, that's
9 Appellate Exhibit 391 that's the government's response to the Court's
10 clarification of the lesser included offenses that's being litigated
11 this week; again, Appellate Exhibit 391. And, although not a new
12 appellate exhibit, on the 16th of November 2012, the government did
13 file a corrected copy number two to the government's response to
14 speedy trial what is originally, and still, marked as Appellate
15 Exhibit 339 and that included adding Enclosure 81 to that -- the
16 original exhibit.

17 MJ: All right. And one final thing that was discussed during
18 the R.C.M. 802 conference and also via some email traffic between
19 myself and the parties, the defense had asked me if -- the Court has
20 advised at the last session -- the defense had moved to compel 1200
21 emails back and forth that were maintained at Quantico for purposes
22 of the Article 13 motion. The Court did review all of those in
23 camera. The government had voluntarily released 600 of them and the

1 Court was doing an *in camera* review of the other 700, but the Court
2 looked at all of -- the Court has reviewed all of the emails that
3 were maintained by Quantico, to include the 84 originally given from
4 the government to the defense before any of the litigation began.
5 The defense asked if the Court would consider those emails as part of
6 the Article 13 motion in addition to just doing the *in camera* review.
7 The government didn't object. The Court will do that.

8 The Court did go back to both parties, by email, with
9 respect to Appellate -- the -- Enclosure 81 to the speedy trial
10 motion which is, basically, a box of emails between the government
11 and defense as well as those 1200. I will consider any documentation
12 that the parties would like me to consider. It's up to the parties,
13 not me, to find relevance, so just point out to me what, if any, of
14 these documents are relevant. What I'm not going to do is go
15 searching through boxes of documents to find something that may be
16 relevant and say, "Aha, there it is."

17 CDC[MR.COOMBS]: Yes, Your Honor, and the defense's request on
18 this was not for the Court to go back and look at all 1274 emails,
19 but, instead, based upon what we elicit through the witnesses this
20 week, to have the general understanding, based upon your review, of
21 how involved all the individuals were and how many emails were going
22 back and forth by different members at different ranks and the
23 issues, I guess, that they were discussing.

1 MJ: Okay. And I'll do that. Yes?

2 TC[MAJ FEIN]: Your Honor, similarly, for speedy trial, for
3 Enclosure 81, the intent -- and the government will highlight during
4 argument -- is the amount of communication and request the defense
5 submitted over the time period that they allege is -- that was
6 apparent inactivity to show and highlight for the Court which of the
7 emails in that grouping. So, it will probably be done in groupings
8 for time period.

9 MJ: Okay. Thank you. And just to -- again, what would be
10 incredibly helpful for the Court in those kinds of things is I
11 understand you may be doing this in oral argument? I mean, if
12 there's some kind of, you know, an index or something that can say,
13 "Okay, look at emails 1 through 15. This addresses defense request
14 for such and such or look at emails in Volume 4. You can find that
15 this person was very involved or not involved by looking at emails 1,
16 7, 10, 15."

17 CDC[MR.COOMBS]: Yeah, the -- Your Honor, the defense will,
18 through the witnesses, provide you with the emails that we believe
19 are relevant so you'll have those by Bates number.

20 TC[MAJ FEIN]: And, ma'am, the government will provide the Court
21 and, of course, the defense a key ahead of argument so it's not first
22 presented on the screen or in oral argument.

1 MJ: Okay. Thank you. Any additional housekeeping measures
2 that we need to address?

3 TC[MAJ FEIN]: No, Your Honor.

4 CDC[MR.COOMBS]: No, Your Honor.

5 MJ: All right. The bulk of the proceedings this week -- and we
6 are scheduled to go through Sunday and if we need to go longer, we
7 will -- are going to be the Article 13 motion from the defense and I
8 believe the parties have asked for a recess before we begin on those
9 motions?

10 TC[MAJ FEIN]: Yes, Your Honor, if we may recess until 1500 and
11 then we'll begin with the first witness and probably admitting
12 appellate record evidence for this motion.

13 MJ: All right. Any objection to a recess until 1500?

14 CDC[MR.COOMBS]: No, Your Honor.

15 MJ: All right. Court is in recess until 1500.

16 **[The Article 39(a) session recessed at 1353, 27 November 2012.]**

17 **[Article 39(a) session was called to order at 1504, 27 November**
18 **2012.]**

19 MJ: This Article 39(a) session is called to order. Let the
20 record reflect all parties present when the court last recessed are
21 again present in court. Are we ready to proceed?

22 CDC[MR.COOMBS]: Yes, Your Honor.

1 TC[MAJ FEIN]: Yes, Your Honor. And, Your Honor, before the
2 first witness is called, just to put on the record, the seven pieces
3 of physical evidence, for the purposes of this motion hearing, both
4 from the defense and prosecution, I'll describe each one quickly for
5 the record and the photographs have been marked by the court
6 reporter.

7 So, first, Your Honor, Appellate Exhibit 411, which is a
8 suicide blanket, it's blue in color, approximately 4 by 6 feet. Your
9 Honor, Appellate Exhibit 412 is a standard confinement pillow, silver
10 in color. Appellate Exhibit 413 is a standard confinement mattress,
11 cream in color. Appellate Exhibit 414 is a suicide mattress, blue in
12 color, with a built-in pillow. Appellate Exhibit 415, a suicide
13 smock, green in color. Your Honor, Appellate Exhibit 416 is a bed
14 sheet noose, peach in color. And, finally, Your Honor, Appellate
15 Exhibit 417 is a bag that has two green, metal objects and one
16 sandbag-tied noose. And both of those items -- or all three of those
17 items are green.

18 MJ: All right. Any objection to photographs substituted for
19 the record?

20 CDC[MR.COOMBS]: No objection to that, Your Honor, although the
21 defense would reserve, for the exhibits besides 416 and 417, the
22 ability to indicate or give evidence that they're not representative
23 of what PFC Manning used when he was at Quantico.

1 MJ: So you're going to do that through testimony or through ---

2 -

3 CDC[MR.COOMBS]: Through testimony, Your Honor.

4 MJ: Okay. All right. Are we ready to proceed?

5 CDC[MR.COOMBS]: Yes, Your Honor. The defense would call
6 Colonel Daniel Choike to the stand.

7 **COLONEL (Retired) DANIEL CHOIKE, U.S. Army, was called as a witness**
8 **for the defense, was sworn, and testified as follows:**

9 **DIRECT EXAMINATION**

10 **Questions by the trial counsel [MAJ FEIN]:**

11 Q. And, sir, for the record, you are Colonel (Retired) Choike,
12 of Stafford, Virginia?

13 A. Yes.

14 TC[MAJ FEIN]: Thank you, sir.

15 **Questions by the civilian defense counsel [Mr. COOMBS]:**

16 Q. Colonel Choike, I know that you are retired, but do you
17 mind if I refer to you as Colonel Choike?

18 A. I do not.

19 Q. Could you tell the Court what you do now in your position?

20 A. Recently retired, I have been hired in as Vice President
21 for Critical Infrastructure Development at Technology Associates
22 which is an IT firm that operates out of Stafford, Virginia.

1 Q. All right, so I want to turn to why you are here today.
2 So, I am going to ask you a few questions. If at any time you do not
3 understand my question, just ask me to repeat it and I will be happy
4 to do so. And as I mentioned to you on the break, if you need a
5 comfort break at any time, just let me know and we will be happy to
6 accommodate that, okay?

7 A. Okay.

8 Q. Now, PFC Manning initially arrived at Quantico on 29 July
9 2010?

10 A. Yes.

11 Q. And, you knew that PFC Manning was coming to Quantico about
12 48 hours prior to his arrival?

13 A. Yes.

14 Q. And you found out that information through Colonel Oltman?

15 A. Yes.

16 Q. And, you were aware that Oltman found out that information
17 through CW5 Galaviz?

18 A. Yes.

19 Q. And, CW5 Galaviz was up at Plans -- PPO, plans ----

20 A. Plans, Policies and Operations.

21 Q. ---- Policy and Operations: Corrections, is that correct?

22 A. Yes.

1 Q. Now, when you got notified that PFC Manning was coming to
2 Quantico, you held a staff meeting?

3 A. Correct.

4 Q. And this meeting was held on either the 27th or 28th of
5 July?

6 A. It was approximately either the day before or the day that
7 we received him.

8 Q. All right, and that would be the 27th, 28 July?

9 A. Yes.

10 Q. And you spoke with Colonel Mortenson, the Chief of Staff
11 for Lieutenant General Flynn to let him know about the meeting that
12 was happening?

13 A. That is correct.

14 Q. You also asked Colonel Mortenson to let General Flynn know
15 that you were receiving PFC Manning?

16 A. Yes.

17 Q. And, you wanted to notify Lieutenant General Flynn that you
18 were pulling together all of the staff to ensure that things were
19 being done properly in order to receive PFC Manning?

20 A. Yes.

21 Q. And this meeting was held in your conference room?

22 A. Yes.

23 Q. And, Colonel Oltman was present for the meeting?

1 A. Yes.

2 Q. Lieutenant Colonel Greer, your Staff Judge Advocate was
3 present at the meeting?

4 A. Yes.

5 Q. And, you believe that Chief Averhart and some of the Brig
6 staff was also present for the meeting?

7 A. No, Chief Averhart, I don't believe was. And, I am not
8 really certain, in terms of Brig staff that were there, I do not
9 recall.

10 Q. So, this was a meeting to coordinate everybody to properly
11 receive PFC Manning and you do not believe that Chief Averhart and
12 the Brig staff was present?

13 A. This was not a meeting for the reception of PFC Manning,
14 this had to do with the fact that we were receiving somebody that was
15 not within the Marine Corps chain of command, was in the Army, and
16 that there was a different General Convening Authority, a different
17 command that owned him, different legal and medical circumstances, so
18 it was that coordination to include the public affairs coordination
19 that was done, knowing that the seriousness of the charges that were
20 faced against him. And, it was more or less for once we received
21 him, all the other things that would affect the installation.

22 Q. So your memory today is that Chief Averhart was not
23 present?

1 A. Chief Averhart?

2 Q. Correct.

3 A. I thought you said Galaviz, I am sorry.

4 Q. Chief Averhart?

5 A. Yes, I believe he was.

6 Q. Okay. So, I will go back just to make sure for the record

7 that at this meeting, Chief Averhart and members of his staff were

8 present?

9 A. Yes, I believe so.

10 Q. Now, you talked about you were aware of the nature of the

11 charges that PFC Manning was facing, correct?

12 A. Not in detail.

13 Q. You were aware that they were serious charges?

14 A. Yes.

15 Q. And, you were told about the nature of the charges?

16 A. Yes.

17 Q. And, you were told of PFC Manning was considered a suicide

18 risk?

19 A. Yes, according to the documentation that was received.

20 Q. And, your staff advised you that there was substantial

21 media coverage concerning PFC Manning?

22 A. Yes,

1 Q. And, because you were briefed that there was substantial
2 media coverage, then obviously your Public Affairs Officer was
3 present as well?

4 A. Yes.

5 Q. And, that was Colonel T.V. Johnson?

6 A. It was at the time, but I do not recall his face very
7 specifically being there, it would have been another representative
8 from the Public Affairs Office.

9 Q. Like Lieutenant Villiard?

10 A. Either Lieutenant Villiard or, I am trying to think of the
11 name of the civilian -- Chuck Jenks.

12 Q. Now, it was clear at this meeting this was a high- profile
13 case?

14 A. Yes.

15 Q. And, by having someone facing the charges that Manning was
16 facing and by having somebody with that amount of media attention,
17 that gave you concerns specifically as an installation commander,
18 what that might mean as far as attention to the installation?

19 A. That is correct.

20 Q. Attention from the public?

21 A. Attention -- I am not sure what you are ----

22 Q. Attention from the public to the installation as well?

23 A. Attention from the public, yes.

1 Q. We will get to that part, but he said, "We need to make
2 sure we cover down on what we have learned from that case." You
3 would agree with me that he is instructing you, basically, to ensure
4 that the lessons learned from previous case applied to this case?

5 A. Just in the manner of which I just spoke with you, no.

6 Q. Okay.

7 A. Nothing specifically, in terms of handling instructions
8 within the Brig.

9 Q. I didn't ask that. I just simply ----

10 TC[MAJ FEIN]: Your Honor, objection, 15 minutes have gone by,
11 it has been leading questions the entire time. Colonel Choike has
12 answered the question. Mr. Coombs does not like the answer is trying
13 to lead him to. Just ask the open-ended questions and you will get
14 the response.

15 MJ: I am going to give you a little leeway but if he does not
16 agree with you, he does not agree with you.

17 CDC[MR. COOMBS]: I'm sorry, Your Honor; first, I did not
18 understand the government's objection.

19 MJ: Well initially, I think it is the objection is that you are
20 asking a leading question.

21 CDC[MR. COOMBS]: Correct.

1 TC[MAJ FEIN]: That is the first objection. The second is, Your
2 Honor, he asked it, and it was answered the defense keeps asking the
3 same question.

4 CDC[MR. COOMBS]: So, I would like to, if I could, respond to
5 both, Your Honor.

6 MJ: Go ahead.

7 CDC[MR. COOMBS]: With regards to the leading, I would say
8 M.R.E. 611(c). This is clearly a witness identified with ----

9 MJ: Alright, the leading I'm going to overrule. Go ahead.

10 CDC[MR. COOMBS]: And with regards to the responses, I am
11 simply just clarifying the answer. I believe ----

12 MJ: I will give you a little leeway with respect to that, but
13 the witness has answered -- can answer the way he wants to.

14 CDC[MR. COOMBS]: Sure. No, and I do not dispute that, Your
15 Honor.

16 Q. I believe the witness was believing--and Colonel Choike,
17 correct me if I am wrong, I was not asking you whether or not he was
18 telling you to apply any particular handling restrictions to PFC
19 Manning based upon something previous, just the things that you
20 learned from the previous one apply any lessons learned to PFC
21 Manning, that is what I was asking?

22 A. And my response is exactly those areas that he referred to
23 -- implied.

1 Q. So, certain things you have learned from the previous one,
2 he wanted you to apply. And, he said we were going to apply those to
3 this case, correct?

4 A. Yes.

5 Q. Okay. So, in fact if you look down, he says in this email,
6 he actually attaches a New York Times article, do you see that?

7 A. Yes.

8 Q. And, based upon that article, he says, "This young man has
9 a great deal on his plate and it would be good if you impressed upon
10 all who come into contact with Private Manning the absolute necessity
11 of keeping a close watch on him". Do you see that?

12 A. Yes.

13 Q. So, from that, Lieutenant General Flynn stated that his
14 direction included impressing upon the Brig, medical, chaplain and
15 transport personnel, correct?

16 A. Yes.

17 Q. He wanted you and Colonel Oltman to impress upon all of
18 those individuals the absolute necessity of keeping a close watch on
19 PFC Manning?

20 A. Yes.

21 Q. Lieutenant General Flynn thought PFC Manning was a suicide
22 risk?

23 A. I can't answer that.

1 Q. Well, do you see where he says, "His life has completely
2 fallen apart which makes him a strong candidate, from my perspective,
3 to take his life."

4 A. Those are his words, yes.

5 Q. All right, so from your reading of those words, do you read
6 those to indicate that your three-star general believed he was a
7 suicide risk?

8 A. At this particular point in time, based upon an article
9 that was read, I cannot answer that. I do not know exactly what his
10 thoughts were and whether or not he termed him as a suicide risk,
11 which is a classification term in a Brig.

12 Q. Okay, let me take it a different way. I think you are
13 misunderstanding my question. From reading what the general wrote to
14 you, from your -- as a Colonel working for the three-star, his -- him
15 being your direct supervisor, did you interpret that phrase to
16 indicate that your general was concerned that PFC Manning was a
17 suicide risk?

18 A. He was concerned that he could take his life, just the way
19 he says here.

20 Q. Okay. Now, you sent an email back to Lieutenant General
21 Flynn on that very same day, do you see that?

22 A. Yes.

1 Q. And, you told General Flynn that, "Measures are in place
2 now to ensure all personnel, Brig staff, counselors, mental health
3 physicians, who come into contact with Private Manning know that if
4 he no longer meets the criteria to be detained, that he would be
5 immediately transferred to mental health ward in Walter Reed." Do
6 you see that?

7 A. Yes.

8 Q. You told Lieutenant General Flynn that you just got off the
9 phone with the commanding officer of the Naval Health Clinic, that
10 was Captain Mary Neill, and you directed that she provide you with
11 weekly updates on Private Manning?

12 A. Yes.

13 Q. You also told Lieutenant General Flynn that you just got
14 off the phone with Colonel Oltman, and he is of course the Security
15 Battalion Commander, and you directed him to provide you with weekly
16 updates of Private Manning?

17 A. Yes.

18 Q. You told General Flynn that you would forward a copy of the
19 weekly reports to him personally?

20 A. Yes.

21 Q. You told General Flynn that these updates would be separate
22 from the weekly base updates that you normally give him?

23 A. Yes, but they were never sent.

1 Q. We will get to the question, okay? So, you told him that
2 you would send these updates separate from the weekly base updates
3 that you provide to him?

4 A. Yes.

5 Q. You CCed your Sergeant Major, Colonel Mortenson, Colonel
6 Miner, Captain Neill, Colonel Oltman and Colonel Kauzlarich on this
7 email, correct?

8 A. That is correct.

9 Q. And Colonel Kauzlarich was your Chief of Staff?

10 A. Yes.

11 Q. Captain Neill we have already covered. Colonel Oltman, we
12 know. Colonel Mortenson was, who?

13 A. Chief of Staff for General Flynn.

14 Q. All right, and you sent a -- I'm going to go ahead and
15 retrieve for 414a from you. Now, you sent a second update to General
16 Flynn later that same day concerning PFC Manning, do you recall that?

17 A. Yes.

18 Q. You informed General Flynn that you would provide weekly
19 updates or updates of any status changes or concerns raised by the
20 Security Battalion, Brig staff or mental health physicians?

21 A. Yes.

1 Q. Let's talk about the weekly updates that you would provide.
2 You started these weekly reports based upon, of course, General
3 Flynn's email to you, correct?

4 A. Yes.

5 Q. And Chief Averhart and subsequently Chief Barnes would put
6 together and file a weekly report up to Colonel Oltman, the Security
7 Battalion Commander?

8 A. That is correct.

9 Q. And Colonel Oltman then after considering that, concurring,
10 would then forward that weekly update to you?

11 A. That's correct.

12 Q. And then you would consider that weekly update and forward
13 it directly to Lieutenant General Flynn?

14 A. I did not forward them to him.

15 Q. I am sorry, your testimony is that you never forwarded
16 these weekly updates to Lieutenant General Flynn?

17 A. That's correct. In the last email that you are talking
18 about right now ended in a phone call because there was
19 correspondence going back and forth between General Flynn and myself.

20 Q. We will talk about that a moment, but my question was, your
21 answer, under oath now, is you never forwarded these weekly reports
22 to General Flynn?

23 A. That is correct.

1 Q. Do you recall our conversation where you told me that you
2 did forward these weekly updates to Lieutenant General Flynn?

3 A. Yes, and also recall after -- we were part-way through a
4 conversation I said ----

5 Q. Colonel Choike, please listen to my question ----

6 MJ: He is trying to answer the question, I will let him do
7 that, go ahead.

8 CDC[MR. COOMBS]: Your Honor ----

9 A. Initially when you asked me that question, I said, "Yes",
10 because of what you were reading to me that I did not have privilege
11 to. Then, I recalled the conversations that General Flynn and I had
12 on the phone and he did not want details. He did not want the
13 details or me quoting to him the SECNAV Instruction or the base--the
14 Brig SOP. And because he did not want those details, I did not
15 forward the weekly reports.

16 Q. Your testimony is, he did not want these updates after the
17 August 9 email when you said, "Hey, I am going to send the stuff to",
18 you had a phone conversation with him and he said, "Hey Colonel
19 Choike, I do not want these updates"?

20 A. His initial inquiry, I thought he was interested in the
21 details. And then, exchange of emails back and forth on August 9
22 which ended in a phone call, I realized that he did not want details,
23 that he just wanted to ensure that his guidance was understood. And

1 so, he did not need, at that point, I felt that he did not need or
2 want the weekly reports so I do not send them to him.

3 Q. Okay, so if I am following you, you are saying that he --
4 Lieutenant General Flynn did not want any details about this?

5 A. He did not want the details of what was in the weekly
6 reports.

7 Q. Okay, and that was because, why?

8 A. It was based upon the telephone conversation that he and I
9 had.

10 Q. And what did he say?

11 A. He said, "I am not interested in the details. I just want
12 you to understand my intent".

13 Q. And that is all he said?

14 A. Pretty much. It was a very short conversation.

15 Q. And he did not -- did he indicate to you why he did not
16 want the details?

17 A. He wanted to ensure, in his words, that there was
18 appropriate leadership to ensure that the staff members were
19 coordinating and communicating with one another.

20 [The court reporter marked Appellate Exhibit 418B.].

21 CDC[MR. COOMBS]: I am handing you what has been marked as
22 Appellate Exhibit 418b. A copy has been provided to the court. It
23 has been previously provided to the defense by the government and

1 shown to the government. So he did not want details. If you go
2 ahead and look at this email chain for a moment, do you recognize it?

3 A. Yes, I do.

4 Q. All right, go to Page 3, if you would, of the email chain.
5 Do you see where you told General Flynn, who did not want details,
6 about David House and Jane Hamsher being denied access to the base?

7 A. Yes.

8 Q. You also told General Flynn, who did not want details, that
9 you were sending a more detailed report. Do you recall that? Do you
10 see that there?

11 A. What page?

12 Q. Same page?

13 A. I am having a hard time following what your question is.

14 Q. If you turn to Page 3.

15 A. Page 3.

16 Q. Do you see your email to General Flynn?

17 A. Yes.

18 Q. Do you see where you informed General Flynn that David
19 House and Jane Hamsher have been denied access to the base?

20 A. Yes, the more detailed report is the information that is
21 coming in the form of a SITREP.

22 Q. Exactly. So you say that you will send more -- a more
23 detailed report?

1 A. That's correct.

2 Q. And then, General Flynn -- apparently told you he was not
3 concerned about details responded to you within 7 minutes of your
4 email, do you see that?

5 A. Yes. You are talking from August to January 23rd and you
6 are talking about an incident that took place at the front gate and
7 not the Brig.

8 Q. Well, I am asking you the question. Do you see where he
9 responded to you within 7 minutes?

10 A. Yes.

11 Q. And the two of you then exchanged several emails, correct?

12 A. Yes.

13 Q. And later that same day you tell General Flynn about PFC
14 Manning's cousin visiting him; do you see that?

15 A. Yes.

16 Q. You tell him about my call also to the Brig asking that the
17 Brig inform PFC Manning that David Hamsher, excuse me, David House
18 and Jane Hamsher have been denied access, do you see that?

19 A. Yes.

20 Q. And then, you tell General Flynn that this was an
21 unauthorized communication on my part and Chief Averhart is going to
22 summarize my request in an email that would be sent to the SJA, do
23 you see that?

1 A. Yes.

2 Q. You also told him that you spoke to the public affairs
3 officer, Colonel T.V. Johnson about the events of the day that he was
4 ready to respond to him?

5 A. Yes.

6 Q. I am retrieving 418B. I am showing you what has been
7 marked as 418C. Do you see that this is an email from your PAO
8 Colonel Johnson?

9 A. Yes.

10 Q. He includes not only you, your SJA, but also Lieutenant
11 General Flynn and the SJA on the email?

12 MJ: Mr. Coombs, am I going to get a copy of this one or this is
13 something different?

14 CDC[MR. COOMBS]: Your Honor, I believe I had a copy but I am
15 not seeing it in front of me, so -- can I retrieve 418C?
16 [The court reporter gave Appellate Exhibit 418C to the civilian
17 defense counsel.]

18 MJ: Thank you.

19 CDC[MR. COOMBS]: Your Honor, you have a copy now.

20 Q. So as I said, he included you -- not only you, the SJA, but
21 also General Flynn and his SJA on this email, correct?

22 A. Yes.

1 Q. And, this is an email to let General Flynn, who wasn't
2 concerned about details, know about Frontline asking to interview
3 Chief Barnes?

4 A. General Flynn is interested in details that involve the
5 media and both this, as well as the other incident on January 23rd at
6 the front gate involved the media.

7 CDC[MR. COOMBS]: All right. So, I will retrieve this from
8 you and we will try another one.

9 [The court reporter marked Appellate Exhibit 418D.].

10 Q. I am showing you what has been marked 418D. That is an
11 email asking General Flynn to review a letter that you were going to
12 sign, correct?

13 A. This is what the counsel recommend that I sign, yes.

14 Q. And General Flynn, who wasn't worried about details, took
15 the time to read the entire email and then tell you, "Hey, I suggest
16 we take out the letter 'a' before 'blankets' in the fourth
17 paragraph", correct?

18 A. Yes.

19 Q. I am retrieving 418D from the witness. Colonel Choike, are
20 you still saying you never forwarded any weekly reports to General
21 Flynn because he wasn't worried about details?

22 A. There were times in which General Flynn and I corresponded.
23 Mostly it had to do with incidents that were -- that involved the

1 media or interests he had that came from the media or it was --
2 involved the details in regards to the four protests that we had; I
3 think one in August, one in September, one in January, one in March.
4 There was updates and information that dealt with the work that we
5 did prepare for the different demonstrations.

6 Q. Okay, my question for you was, "Are you still saying that
7 you never provided weekly updates regarding PFC Manning to General
8 Flynn"?

9 A. That is correct. They were not consistent as what was
10 being presented to me. From times when he asked questions, I would
11 provide but there were not weekly updates.

12 Q. Okay, so the weekly updates that you were receiving from
13 the Security Battalion you were not forwarding them up to General
14 Flynn?

15 A. That's correct, I was not.

16 Q. And again, the reason why he was not concerned about the
17 details?

18 A. Was based upon that phone call.
19 [The court reporter marked Appellate Exhibit 418E.].

20 Q. I am handing you what has been marked as 418E. This is an
21 email from you to General Flynn telling him that although you haven't
22 had anyone contact you from the United Nations, but had received 43

1 calls from individuals requesting that PFC Manning be released or his
2 custody to change, correct?

3 A. Yes.

4 Q. Why did you inform him of this detail?

5 A. It was connected back to the UN reviews Manning's treatment
6 from the Brig.

7 Q. And that is why you informed him of the details?

8 A. It was -- he asked, I am assuming, because I do not see it
9 here but we have not had anyone contact us from the UN but what we
10 received 43 other calls.

11 Q. Okay. And, I just want to know why are you telling him
12 about this detail?

13 A. I do not recall why other than the fact that this article
14 was presented to me by Lieutenant Colonel Greer. And that apparently
15 Lieutenant Colonel Greer and Colonel Miner may have been
16 corresponding with one another. But, I do not recall very
17 specifically why I submitted that because there is nothing that shows
18 that he requested that information.

19 Q. I am retrieving 418E from the witness. I am handing the
20 witness 418F. This is an email from Colonel T.V. Johnson asking for
21 General Flynn, among others, to review the planned response to the
22 latest media inquiry regarding PFC Manning, correct?

1 A. General Flynn is CCed in on this line. I believe this is
2 Colonel Johnson going directly to Colonel Miner and Lieutenant
3 Colonel Greer, the SJAs for their chop and not for General Flynn.
4 Everybody on the cc line is just to let them know.

5 Q. Exactly. So, General Flynn was being informed of what the
6 PAO was going to be potentially putting out, correct?

7 A. Yes. He had interest in anything that was going to show up
8 in the media.

9 Q. I am retrieving 418F from the witness. So, apparently he
10 had interest in what was coming from the media but absolutely no
11 interest in your weekly updates from Chief Averhart and Chief Barnes?

12 A. Is that a question or a statement?

13 Q. That is a question.

14 A. Could you rephrase it.

15 Q. Sure. The same way. Apparently he had interest in what
16 was happening in the media but absolutely no interest in what the
17 recommendations were coming from Chief Averhart and Chief Barnes?

18 A. You were saying, "No interest", no, he had interest but not
19 to where it required weekly updates.

20 Q. Or any updates?

21 A. He received updates either by question that he had directly
22 for us or if there were other meetings that were taking place, other
23 discussions, that he would ask questions.

1 Q. Okay, but never to where you attached the weekly updates to
2 an email?

3 A. That is correct.

4 Q. All right, you also received weekly reports from Captain
5 Neill?

6 A. Yes.

7 Q. And, she would basically summarize from a mental health
8 perspective what was happening at the Brig, correct?

9 A. Yes, she would summarize. I am not sure exactly where she
10 got the information from, I am assuming it is from one of the
11 physicians or psychiatrists that see him. But, yes.

12 Q. And Captain Neill was the commanding officer of the Naval
13 Health Clinic?

14 A. Yes.

15 Q. And, her medical specialty was as a dentist?

16 A. That is correct.

17 Q. She was not a forensic psychiatrist?

18 A. No.

19 Q. Why were you getting weekly updates from a dentist as
20 opposed to getting them directly from the forensic psychiatrist?

21 A. She is the Commanding Officer.

1 Q. Now, you occasionally had -- well, she is the Commanding
2 Officer. Did you also go to the forensic psychiatrist to get
3 updates?

4 A. The updates were provided through the chain of command,
5 that is how we operate.

6 Q. So, you went to a dentist because she was the Commanding
7 Officer and not directly to the forensic psychiatrist?

8 A. I went to the Commanding Officer who happens to be a
9 dentist.

10 Q. Okay, did you ever talk to any the forensic psychiatrist?

11 A. On I believe a couple of occasions, there was a meeting,
12 yes.

13 Q. We will talk about those. So, you did have, occasionally,
14 weekly meetings with everyone concerning PFC Manning, correct?

15 A. Yes.

16 Q. And, those meetings occasionally took place in person?

17 [Pause] Correct?

18 A. I am not sure what you mean by, "in person".

19 Q. Instead of over the phone or whatnot, people together in
20 person?

21 A. Yes. Yes.

22 Q. Now, in one of Captain Neill's reports, she tells you that
23 Captain Hocter reported to you a solid line of communication between

1 medical and security staff, however, she has noted that the new OIC,
2 Chief Averhart, has displayed significant concerns and is anxious
3 about the high level of visibility. Do you recall that email?

4 A. Yes.

5 Q. Now, Chief Averhart had been the Commander for only a few
6 months at the time that PFC Manning arrived, correct?

7 A. Yes.

8 Q. And, did you know what she meant when she said that he was
9 displaying a -- or, displayed significant concern and was anxious
10 about the high-level visibility and risk?

11 A. Nothing more than what is written, what you just read.

12 Q. And how did you interpret that?

13 A. One in which it was apparent to everybody that there was
14 high-interest, that he had concerns of the fact that there was a
15 recent suicide and that the conditions in which we received PFC
16 Manning; the lack of information that he initially had early on; and
17 a lack of observation time. I took that as some of the things that
18 would make him anxious.

19 Q. Okay. Did you speak with Captain Neill about her email
20 concerning Chief Averhart's apparent concern?

21 A. No.

22 Q. Did you take the time to speak to Chief Averhart about his
23 concern about the high-level of visibility and risk?

1 A. Not directly.

2 Q. How did you do it indirectly?

3 A. Colonel Oltman.

4 Q. Please explain?

5 A. Colonel Oltman is the Security Battalion Commander and has
6 oversight over Chief Averhart.

7 Q. What I meant was, please explain how you did it indirectly?

8 A. Just, I can't recall the specific time, but just in regards
9 to meetings and discussions that Colonel Oltman and I had had, there
10 wasn't anything that he brought to my attention that would alarm me
11 or alarm him that Chief Warrant Officer Averhart was not capable of
12 doing his job.

13 [The court reporter marked Appellate Exhibit 418G.]

14 Q. I am handing you what has been marked Appellate Exhibit
15 418G for the record. This is the email we were talking about,
16 correct?

17 A. Yes.

18 Q. Now, you forwarded Captain Neill's email to Lieutenant
19 General Flynn, right?

20 A. Yes.

21 Q. Along with a general update?

22 A. Yes.

1 Q. And in your email you state that Private Manning's status
2 was changed from suicide prevention to prevention of injury?

3 A. Yes.

4 Q. And by saying this, you were saying that the recommendation
5 by mental health professionals was that he be taken off of suicide
6 risk, correct?

7 A. Yes.

8 Q. Not that he was not actually taken off of suicide risk?

9 A. Yes.

10 Q. So, he was still on suicide risk at this point?

11 A. Yes.

12 Q. Do you know why?

13 A. Based upon the SECNAV Instruction and the Brig SOP that was
14 a part of the attachment, that Chief Warrant Officer Averhart was
15 responsible for the health and welfare of all detainees and that he
16 would take into account all information and input and that he utilize
17 his staff through the classification and assignment meetings that
18 they had on a weekly basis to make the final call.

19 Q. So, if I am understanding correctly, he was still on
20 suicide risk because Chief Averhart decided so?

21 A. Chief Averhart decided to take all input from the
22 classification and assignment, that he took the information from the
23 doctor and then the next time they were going to meet, they were

1 going to fully discuss it and determine exactly what classification
2 or assignment that PFC Manning would be in.

3 Q. So, is that a, "Yes" that Chief Averhart decided to keep
4 him on suicide risk?

5 A. Yes.

6 Q. So, in this email you also say that the tentative date to
7 allow additional clothing is Wednesday and Doctor Hocter agrees, do
8 you see that?

9 A. Yes.

10 Q. Why do you believe that Doctor Hocter agreed with that?

11 A. That was based upon information that I believe Captain
12 Neill and I may have spoken about, I do not see it here in this
13 email, but it is written and I don't recall very specifically where I
14 got that information, but it is written.

15 Q. Okay, so you believed that, not recalling where you got it,
16 you believe that Captain Hocter agreed, basically, to hold off giving
17 him additional clothing?

18 A. Yes.

19 Q. Did Captain Neill ever brief you on the following day that
20 Captain Hocter actually complained about PFC Manning not being given
21 back his clothing?

22 A. No.

1 Q. Did Captain Neill report to you that Captain Hocter
2 complained about the Brig continuing PFC Manning on suicide risk for
3 security reasons the following day?

4 A. No.

5 [The court reporter marked Appellate Exhibit 418H.]

6 Q. I am retrieving 418G from the witness. I am handing the
7 witness what has been marked as 418H.

8 Do you know what this is?

9 A. It is emails between Captain Neill and Doctor Hocter.

10 Q. And, do you see in this email where Captain Neill says she
11 is with you and will present Captain Hocter's recommendations
12 directly to you? It would be towards the top.

13 TC[MAJ FEIN]: Your Honor, objection. This email is not even --
14 Colonel Choike isn't even on this email, he would have never seen
15 this before.

16 MJ: Would you ----

17 CDC[MR. COOMBS]: Yes, Your Honor. My response to that is I
18 am not saying Colonel Choike has seen the email. In the email, which
19 I will ask Colonel Choike, Captain Neill receives a complaint from
20 Captain Hocter. She says, "I am with the commander right now", which
21 is Colonel Choike, "and, I will relay your concerns directly to him".
22 So, I am going to ask if she did that.

23 MJ: Go ahead, overruled.

1 Q. So, do you see where she says she is with you and will
2 present Captain Hocter's recommendations directly to you?

3 A. Yes, I see it.

4 Q. And, I know it has been a long time. Do you believe --
5 well, do you recall her doing that, now after having looked at this
6 email?

7 A. I do not recall.

8 Q. All right. And, just so I know for clarification -- I am
9 retrieving exhibit from you. I am retrieving 418H from the witness.
10 Are you saying that you do not recall or you do not believe she ever
11 did update you?

12 A. I do not recall. It says in that email, it says that she
13 is with me right now. I don't recall that meeting of her being with
14 me on that date and time.

15 Q. All right, so I got that. And, do you believe that she
16 ever updated you, saying that Captain Hocter actually was upset that
17 the clothes were not returned and he was not happy about him being
18 held on suicide precautions because it was not -- because of a
19 security reason status?

20 A. As far as him being upset, there was no -- that was never
21 part of our conversation, no.

22 Q. Okay. So, can I ----

1 A. What his recommendations were, she did relay, but not in
2 terms of if he was upset or was frustrated.

3 Q. And I want to make sure I have your testimony correct, all
4 right. Your testimony is either -- is that you do not recall her
5 ever informing you of this or is your testimony, "I know she never
6 informed me of this". Do you see this distinction?

7 A. I do not recall her ever informing me. If she says that
8 she is with the right now, chances are she was with me as we talked.
9 And from time-to-time we would have discussions, whether it be face-
10 to-face or over the phone but I do not recall that specific meeting.

11 Q. Okay. Now, actually, if we could go back to the previous
12 one. I want to ask a few questions about 418G again for a moment
13 okay? So, I want you to have the benefit of having it in front of
14 you, I am going to hand 418G back to you.

15 Now, in this email to General Flynn, you state that Private
16 Manning receives a daily sunshine call for approximately one hour, so
17 he is not completely clotheless [sic] all day long, do you see that?

18 A. Yes.

19 Q. So, you believed at the time of your email that he was
20 getting one hour of sunshine call?

21 A. Yes.

22 Q. And, why did you believe he was getting one hour of
23 sunshine call?

1 A. Either based upon things that I read or information that I
2 received from Colonel Oltman.

3 Q. Did you know that Private Manning was actually only
4 receiving 20 minutes of sunshine call during this time?

5 A. During this time in August, no.

6 Q. Correct.

7 A. No.

8 Q. Were you aware of the fact that Private Manning only got 20
9 minutes of sunshine call until 10 December 2010?

10 A. No.

11 Q. Would that surprise you if that were true?

12 A. Based upon the weekly updates, there was information that
13 showed that he chose to end his sunshine calls and recreational time
14 early, at the 20 minute mark. So, for it to surprise me, no.

15 Q. I guess maybe you do not understand the question. Would it
16 surprise you if all he was permitted from the time he got there, 29
17 July to 10 December 2010, was 20 minutes of sunshine call, would that
18 surprise you?

19 A. Yes, it would.

20 Q. Thank you. I am retrieving 418G from the witness. Now, as
21 you indicated, there was a lot of media interest in this case,
22 correct?

23 A. Yes.

1 Q. And you were concerned about the media interest?

2 A. Yes.

3 Q. Lieutenant General Flynn was also concerned about the media

4 interest?

5 A. Yes.

6 Q. The PAO, Colonel Johnson, included you, Colonel Oltman,

7 General Flynn and many others on the staff on his PAO emails that he

8 would send out?

9 A. Yes.

10 Q. And he would also seek, by his emails, input from you,

11 Colonel Oltman, General Flynn and other members of the staff on

12 proposed responses to media questions?

13 A. Yes.

14 Q. And you sometimes provided input?

15 A. Frequently.

16 Q. And, General Flynn sometimes provided input?

17 A. I cannot answer that specifically.

18 Q. You do not recall him ever providing input?

19 A. Well, there is emails that shows that he has in the past

20 and I'm sure that he has, but his direct input did not come through

21 me. Colonel Johnson works directly for General Flynn, as well as

22 other staff members. So, if that input was given, the amount of time

1 and how frequent that he did, I can't give you the amount but Colonel
2 Johnson worked directly for General Flynn.

3 Q. No, I know. My question was that General Flynn sometimes
4 provided input?

5 A. I assume.

6 Q. Now, Colonel Oltman also provided, sometimes, input as
7 well?

8 A. Yes, details.

9 Q. Now, in addition to you, Colonel Oltman and General Flynn
10 were also included on any proposed media responses and releases
11 regarding Private Manning, correct?

12 A. Yes.

13 Q. And Colonel Johnson also put together what he determined,
14 or called, an assessment of the overall media coverage, correct?

15 A. Yes.

16 Q. And, that would basically cover all the media stories that
17 were put out during a particular time period and break them down by
18 the type of media and whether the story was favorable or not to
19 Quantico, correct?

20 A. I have seen only a couple of those reports, but yes.

21 Q. All right, and, these assessments also tracked print and
22 online coverage, broadcast coverage, blogs, commentary and even
23 Twitter activity, correct?

1 A. Yes.

2 Q. You, Colonel Oltman, General Flynn were also included on
3 what was called PAG's, Public Affair Guidance, correct?

4 A. Yes.

5 Q. And these Public Affairs Guidance the PAG's, they were
6 staffed through Quantico, Headquarters, Marine Corps counsel and also
7 counsel for the Office of the Secretary of Defense, correct?

8 A. I do not know above my level in terms of who was
9 coordinated above. I know that internal to the base, and I knew
10 through the legal channels, information was being forwarded up, but
11 past Headquarters, Marine Corps to DoD, I wasn't made aware of that
12 and did not concern myself with it.

13 Q. So, let's go with what you are aware of and concerned
14 yourself with. Who had to hack off on the PAG's, the Public Affairs
15 Guidances?

16 A. The members of the staff, specifically for response to make
17 sure that it was accurate in regards to date-times and then the
18 lawyers and General Flynn, his Chief of Staff, my Chief of Staff,
19 Colonel Oltman. It was shotgunned out, if you will, to quite a few
20 people take a look at to ensure that it was proper and it was
21 accurate.

1 Q. All right. And when the PAG's were approved, then they
2 would be sent for -- to Lieutenant General Flynn just to see
3 completely?

4 A. Yes.

5 Q. Now, Colonel Johnson, as the PAO, his office also drafted
6 news articles for publication, correct?

7 A. Yes.

8 Q. And prior to releasing these articles, Colonel Johnson
9 would ask you, Colonel Oltman, General Flynn and others to review,
10 edit and approve the articles?

11 A. Yes.

12 [The court reporter marked Exhibit 418I.]

13 Q. I am handing you what has been marked 418I. I would like
14 to ask a few questions about this email chain. And, this is an email
15 chain the dates from 27 through 30 December 2010. If you look there,
16 you see the email chain includes you, General Flynn Major General
17 Ary, Mr. Geoffroy, Lieutenant Colonel Wright, Mr. Durham, Colonel
18 Shumake, CW5 Galaviz for CW4 Averhart and Colonel Oltman among
19 others, correct?

20 A. This did not originate with myself or General Flynn
21 involved, no. But later, the following days, it did include and to
22 where General Flynn did respond.

1 Q. Okay, so -- and I understand, it is an email chain that,
2 basically as it was forwarded, more people got put on, some people
3 got taken off, but the email chain stayed with the email, correct?
4 A. The email started specifically between General Ary and Mr.
5 Geoffroy.
6 Q. Yeah, let us talk about that. Let us go to the last email
7 and talk about Major General Ary. Major General Ary is the SJA to
8 the Commandant, correct?
9 A. Correct.
10 Q. He is your highest-ranking attorney in the Marine Corps?
11 A. Yes.
12 Q. And, he is writing to Mr. Geoffroy?
13 A. Yes.
14 Q. Mr. Geoffroy is the Assistant Deputy Commandant for
15 Headquarters, Plans, Policy and Operations Security, correct?
16 A. Yes.
17 Q. So, Mr. Geoffroy is basically, you know, the second person
18 in the level of hierarchy within the Marine Corps Corrections and
19 Security, is that correct?
20 A. Yes.
21 Q. And, he is somebody that CW5 Galaviz reports to?
22 A. Yes.

1 Q. And, Chief Galaviz was the individual that you requested to
2 conduct an assessment of Private Manning's confinement conditions in
3 February of 2011, correct?

4 A. Say that again, I am sorry?

5 Q. Chief Galaviz was somebody that you requested to conduct an
6 assessment of Private Manning's living conditions in February of
7 2011?

8 A. That is correct.

9 Q. Now again, this email starts on 27 December 2010?

10 A. Yes.

11 Q. And, in the email, Major General Ary states that Lieutenant
12 General Flynn, who we know is a very busy man, not interested in
13 details, called him to ask him about Private Manning and the press --
14 recent press articles discussing his treatment at Quantico Brig; do
15 you see that?

16 A. Yes.

17 Q. And Major General Ary writes, "Although Lieutenant General
18 Flynn has the utmost trust and confidence in the way the Brig is
19 being run, and that Private Manning's treatment meets DoD standards,
20 he would like to be proactive and see if there are a few steps we can
21 take to ensure we hold the moral high ground if this issue starts to
22 take hold in the press". Do you see that?

23 A. Yes.

1 Q. So, Major General Ary then states, Lieutenant General Flynn
2 wants to bring in an outside team to give the Brig a clean bill of
3 health?

4 A. Yes.

5 Q. And, he ends the email repeating that General Flynn is
6 confident that we are doing everything that is right?

7 A. Yes.

8 Q. Mr. Geoffroy then responds to Major General Ary and he
9 includes you, General Flynn and others on the email, right?

10 A. Yes.

11 Q. At then he states, "Concur that we should be ahead of the
12 disinformation campaign." Do you see that?

13 A. Yes.

14 Q. It tells Major General Ary that he is coordinating to have
15 a visit to the Quantico Brig to endorse the care and treatment of PFC
16 Manning, do you see that?

17 A. Yes.

18 Q. And then this is when General Flynn chimes in and response
19 and says, "Just what I was looking for." Do you see that?

20 A. Yes.

21 Q. And, in that email, General Flynn CCs you, Colonel Oltman
22 and others in his response?

23 A. Yes.

1 Q. And at this point, Lieutenant Colonel Wright sends you an
2 email, do you see that?

3 A. Yes.

4 Q. And, Lieutenant Colonel Wright also works up at
5 Headquarters, PPO, correct?

6 A. Yes.

7 Q. And, he is CW5 Galaviz' immediate supervisor?

8 A. Yes.

9 Q. And, in this email, CW5 Galaviz is included on the email?

10 A. Yes.

11 Q. And, Lieutenant Colonel Wright tells you that Colonel
12 Shumake, Army Colonel, from the Office of the Secretary of Defense
13 has agreed to conduct a courtesy visit of the Brig?

14 A. Yes.

15 Q. He tells you that this will not be an official inspection?

16 A. Yes.

17 Q. But, due to the international attention regarding PFC
18 Manning's treatment, Lieutenant Colonel Wright tells you that, "I
19 believe it wise to have as many people possible in their official
20 capacity be witness to the conditions Private Manning is subject to
21 so they can personally attest that he is being treated in accordance
22 with regulations". Do you see that?

23 A. Yes.

1 Q. This is when you tell the Lieutenant Colonel Wright that
2 you had your own IG conduct a visit of the Brig?

3 A. That is correct.

4 Q. And that IG that you are referring to is your deputy IG,
5 Major Timothy Zelek?

6 A. That's correct.

7 Q. And Lieutenant Colonel Wright that after you send your
8 report, the report of Major Zelek, to General Flynn, you will send
9 him a copy as well?

10 A. Yes.

11 Q. And in this email you elect to include Colonel Oltman, CW5
12 Galaviz, Chief Averhart and Colonel Shumake, right?

13 A. Yes.

14 Q. So, at that point, Chief Averhart would have the benefit of
15 all those other emails in that chain, correct?

16 A. Yes.

17 Q. Now, the person that is supposed to come conduct a courtesy
18 visit, Colonel Shumake, then sent you an email saying, "I know you
19 have this well in hand, but I just want to be able to give my bosses
20 a firsthand look to be sure we can manage this up from my level." Do
21 you see that?

22 A. Yes.

1 Q. And, Colonel Shumake goes on to say, "I know it has all
2 been handled by the book I just want to say that I confirmed it."
3 A. Yes.
4 Q. Colonel Shumake has not come and looked at anything at this
5 point, right?
6 A. He never did.
7 Q. But even at that point, he was already pre-opining as to
8 what the result would probably be, correct?
9 A. That is what his words say here in email, yes.
10 Q. And you respond to those words, "Thanks Shawn, look forward
11 to the visit." With an exclamation point, correct?
12 A. Yes.
13 Q. Let's talk about your Deputy IG for moment, Major Zelek,
14 and his report. Now, after General Flynn told Mr. Geoffroy, "Just
15 what I was looking for", and in response to Mr. Geoffroy's suggestion
16 of staying ahead of the disinformation campaign, you sent an email
17 directly to Lieutenant General Flynn, correct?
18 A. I don't recall.
19 [The court reporter marked Appellate Exhibit 418J.].
20 Q. I am handing the witness what has been marked as Appellate
21 Exhibit 418J. Go ahead and look that email for a moment. Do you see
22 where you sent an email to Lieutenant General Flynn?
23 A. Yes.

1 Q. And in your email to Lieutenant General Flynn, you told him
2 that you just had Major Zelek conduct an unannounced visit to the
3 Brig?

4 A. Yes.

5 Q. And you attached a copy of the report for his review?

6 A. Yes.

7 Q. You also told General Flynn about your planned courtesy
8 visit by Colonel Shumake?

9 A. Yes.

10 Q. And finally, you told General Flynn of your plan to sit
11 down with Colonel Thomas V. Johnson, your PAO, to use Major Zelek's
12 report for, "For developing a more comprehensive Public Affairs
13 Guidance and Information Campaign." Do you see that?

14 A. Yes.

15 Q. So, you planned to use this report, "In order to put things
16 into better perspective in the media"?

17 A. Yes.

18 Q. I am retrieving 418J from the witness. Now, in early
19 January you got an email from Lieutenant Colonel Wright essentially
20 saying that in light of Major Zelek's report, Colonel Shumake's visit
21 may no longer be needed, correct?

22 A. Yes.

1 Q. And, you responded to that email the same day; do you
2 recall?

3 A. I don't recall if it was the same day but I do recall
4 responding.

5 [The court reporter marked Appellate Exhibit 418K.].

6 Q. This is 418K, take a look at that for a moment. So, you
7 responded to that email the same day, correct?

8 A. Yes.

9 Q. And you CCed CW5 Galaviz and Colonel Oltman on your email?

10 A. Yes.

11 Q. And in your response, you attached Major Zelek's report?

12 A. Major Zelek?

13 Q. You attached his report?

14 A. Yes.

15 Q. And, you then told Lieutenant Colonel Wright that you still
16 believed, "That a visit is warranted as requested by Mr. Geoffroy and
17 Lieutenant General Flynn."

18 A. Yes.

19 Q. And you asked Lieutenant Colonel Wright, "For support in
20 encouraging that this visit takes place."

21 A. Yes.

22 Q. You said, "If you see the possibility fading, I need to
23 know so I can inform my boss, Lieutenant General Flynn."

1 A. Yes.

2 Q. Lieutenant Colonel Wright then told you that there would be
3 a dual visit from both the Marine Corps and the Army's IG Office?

4 A. Yes.

5 Q. And he told you that he and CW5 Galaviz would be present
6 for that visit?

7 A. Yes.

8 Q. He told you that Colonel Shumake's visit was tentative at
9 this point?

10 A. Yes.

11 Q. Lieutenant Colonel Wright tells you that he is working with
12 the Marine Corps Public Affairs on a press release concerning the
13 upcoming visits?

14 A. Yes.

15 Q. And finally, he tells you that, "Also, just an FYI, General
16 Casey and General Amos will probably have conversation about Manning
17 soon, if they have not already had it."

18 A. Yes.

19 Q. Now, General Casey was the Chief of Staff for the Army at
20 the time?

21 A. Yes.

22 Q. And General Amos was, and still is, the Commandant of the
23 Marine Corps?

1 A. Yes.

2 Q. Why would General Casey and General Amos have a
3 conversation about Private Manning, do you know?

4 A. These are Lieutenant Colonel Wright's words and I cannot
5 answer that. I do not know what ----

6 Q. So, your answer would be, "I wouldn't know why they would
7 have a conversation"?

8 A. No.

9 Q. Is that a, "No"?

10 A. No. These are Lieutenant Colonel Wright's words.

11 Q. I understand that.

12 A. He is speculating, he is speculating.

13 Q. I understand that. My question, and you could say, "I do
14 not know." My question is, do you know why General Casey and General
15 Amos might have a conversation about PFC Manning?

16 A. No.

17 Q. Thank you. Retrieving 418K from the witness. Now, you
18 would agree that the high level of visibility in this case was
19 something that you discussed from the very first meeting even prior
20 to PFC Manning's arrival to the Quantico Brig?

21 A. Yes.

22 Q. And, that high-level visibility was from the media
23 interest?

1 A. Yes.

2 Q. And, it was also a high level of visibility from the
3 command's interest?

4 A. Yes.

5 Q. And, you would track -- if you were to track that command
6 interest, you would track, let's say you would track the command
7 interest from Lieutenant General Flynn, all the way up to
8 Headquarters, Marine Corps?

9 A. What do you mean by track?

10 Q. All right, I am using your words, that you would track the
11 command interest from General Flynn. When you say, "High visibility
12 of command interest", from General Flynn all the way up to
13 Headquarters, Marine Corps having an interest.

14 A. I am not sure what you mean by, "Track".

15 Q. All right. When you say, "High level of command interest",
16 you would say the command interest would start, maybe from General
17 Flynn, the high-level and go all the way up to Headquarters, Marine
18 Corps, correct?

19 A. Yes.

20 Q. And then, from Headquarters, Marine Corps to the Secretary
21 of the Navy and his staff?

22 A. Yes.

23 [The court reporter marked Appellate Exhibit 418L.].

1 Q. I am handing you 418L. Go to the oldest email in the
2 chain, so that will be toward the last page. It is dated 3 January
3 2011 from Mr. Carlyle Shelton?

4 A. Yes.

5 Q. And, Mr. Carlyle Shelton was the Deputy Inspector General
6 for Marine Corps?

7 A. Yes.

8 Q. And this is an email from him to General Amos?

9 A. Yes.

10 Q. Mr. Shelton includes several people on this email, to
11 include Brigadier General Lee, who is the Inspector General for the
12 Marine Corps; is that correct?

13 A. Yes.

14 Q. General Dunford who is the Assistant Commandant of the
15 Marine Corps?

16 A. Yes.

17 Q. And of course, Major General Ary who is, as we know, the
18 SJA to the Commandant?

19 A. Yes.

20 Q. Now in this email he discusses the United Nations and
21 Amnesty International are taking an interest in PFC Manning and his
22 confinement conditions, correct?

23 A. Yes.

1 Q. The email discusses also Major Zelek's inspection?
2 A. Yes.
3 Q. It also discusses the fact that General Casey has directed
4 the Army's Inspector General to assess the quality of life for
5 Private Manning?
6 A. Yes.
7 Q. General Amos responds to this email and he states that he
8 had not heard from General Casey yet, but, "We will fully comply, as
9 it is in everyone's best interest to do so."
10 A. Yes.
11 Q. General Amos also says, "I know that General Flynn is
12 paying particularly close attention to the suicide matter, not
13 wanting to give Manning any opportunity to do such a thing."
14 A. Yes.
15 Q. General Amos then instructs Mr. Shelton to keep him and
16 General Dunford informed of the situation?
17 A. Yes.
18 Q. And, the Inspector General for the Marine Corps, Brigadier
19 General Lee then responds to General Amos; do you see that?
20 A. Yes.
21 Q. And, he includes Lieutenant General Flynn on this email?
22 A. Yes.

1 Q. And in the email, he states that the Army IG was satisfied
2 with the assessment and the quality of life and treatment of Private
3 Manning?

4 A. Yes.

5 Q. He states that, "It appears no further investigation or
6 assessment is required at this point."

7 A. Yes.

8 Q. And Mr. Shelton then sends this entire email traffic to you
9 and Lieutenant Colonel Wright telling you that Brigadier General Lee
10 wants to close the issue out with the Army IG?

11 A. Yes.

12 Q. This would mean, obviously, that the Army IG would not come
13 inspect the quality of life for Private Manning at the Brig, correct?

14 A. Yes.

15 Q. And you respond to Mr. Shelton stating that you were not
16 sure if this met General Flynn's intent?

17 A. Yes.

18 Q. I am retrieving the exhibit from the witness. I would like
19 to discuss another email chain with you.

20 [The court reporter marked Appellate Exhibit 418M.]

21 Q. I am handing the witness 418M. Let us discuss these emails
22 starting from the earliest on 10 January. On that date, CW5 Galaviz
23 sends CW4 Averhart and Colonel Oltman an email and informs them that

1 Mr. Greg Stroebel from the Army's Correction Command would conduct a
2 review of the custody classification process and decisions regarding
3 PFC Manning. Do you see that?

4 A. Yes.

5 Q. And, Colonel Oltman then sends you an email about Mr.
6 Stroebel's pending visit, correct?

7 A. Yes.

8 Q. Colonel Oltman tells you he has some reservations about an
9 independent assessment of PFC Manning?

10 A. Yes.

11 Q. He says, "We should expect that if their opinion is
12 different from ours, Manning's defense counsel will get that
13 information and exploit it in the press."

14 A. Yes.

15 Q. You then respond to Colonel Oltman stating, "We need to
16 stress the importance of concurrence in what we are doing in light of
17 all attention received. CW5 Galaviz is still coming by to visit this
18 Wednesday. We might need to discuss this beforehand."

19 A. Yes.

20 Q. Colonel Oltman then informs you that he will share your
21 concerns with CW5 Galaviz?

22 A. Yes.

1 Q. And Colonel Oltman later tells you that he will have no
2 problem pushing off the visit by Mr. Stroebel?

3 A. Say that again, please?

4 Q. Colonel Oltman tells you later that he'll have no problem
5 pushing off the visit by Mr. Stroebel?

6 A. I cannot find that.

7 Q. Go to a later email.

8 A. What page?

9 Q. I am retrieving the exhibit from the witness. What I am
10 going to do, Colonel Choike, is I am going to read this to you. "He
11 works in the Army Correction Command. I have no problem pushing him
12 off. Easily done with an email."

13 A. That is fine.

14 Q. Do you see that?

15 A. Yes.

16 Q. I am returning the exhibit to the witness. This is when
17 you respond to Colonel Oltman and you state, "Armchair quarterbacks
18 are not welcome. Need experts that understand our service procedures
19 and local SOP under the existing procedures." Do you see that?

20 A. Yes.

21 Q. What did you mean by that?

22 A. I meant that the individuals that were coming to visit
23 needed to have expertise to give an appropriate assessment.

1 Q. And that wasn't Mr. Stroebe1?

2 A. I did not know Mr. Stroebe1 so I did not know, at the time,
3 what his credentials were.

4 Q. Okay. And then, sometime between this email and early
5 February, you appointed CW5 Galaviz to conduct this independent
6 investigation into the Article 138 complaint filed by Private
7 Manning, correct?

8 A. Yes.

9 Q. Retrieving the exhibit from the witness. Now after
10 receiving the Article 138 complaint on 19 January, you decided to
11 request CW5 Galaviz involvement in the process?

12 A. Yes.

13 Q. Can you tell me how and when you got him involved in the
14 138 process?

15 A. In order for a thorough review, I went to the senior
16 individual -- corrections officer with Marine Corps and that was
17 Chief Warrant Officer Galaviz.

18 Q. And that is why you went to him?

19 A. Yes.

20 Q. Did you appoint him to conduct an independent investigation
21 or to reaffirm the correctness of your decisions with respect to
22 Private Manning?

1 A. It was a command directed. There was a letter that was
2 provided to him specifically to look at what was in the letter. And,
3 I cannot recall very specifically what was written in the letter to
4 him but I know I wrote a letter to him.

5 Q. Okay, now Chief Galaviz was included in all of these
6 previous emails, so did you expect him to do an independent
7 investigation or just to give you the green seal of approval.

8 A. I expected him to do his job which is independent
9 investigation and to submit whatever his findings were.

10 Q. You expected that even though his bosses had already opined
11 that they were confident that everything was perfectly fine with how
12 Private Manning was being treated?

13 A. His bosses may not have known the details. He was expected
14 to go down there to look into the details.

15 [The court reporter marked Appellate Exhibit 418N.]

16 Q. I am handing the witness what has been marked as 418N.
17 This is an email from you to Mr. Durham dated 7 February 2011,
18 correct?

19 A. Yes.

20 Q. Mr. Durham is one of CW5 Galaviz' bosses?

21 A. Yes.

22 Q. In your email, what do you say -- or excuse me, why do you
23 say that CW5 Galaviz would assist us in the 138 process?

1 A. What are you referring to, here, specifically?

2 Q. I am referring to your email where you say, CW5 Galaviz

3 would, "Assist us in the Article 138 process." What did you mean by

4 that?

5 A. That he would do a review.

6 Q. Okay. Can you also explain what you meant by, "This

7 inquiry by USMC Corrections expert is instrumental in showing,

8 documenting due diligence on my part"?

9 A. That's correct.

10 Q. What did you mean by that?

11 A. Somebody independently coming in that did not have day to

12 day interaction or is not a part of the Brig staff would come in to

13 do a thorough review.

14 Q. All right, on 7 February 2011, your Chief of Staff, Colonel

15 Kauzlarich wrote to you saying, "Wholeheartedly believe that CW5

16 Galaviz is the best guy for the investigation. Can you task him

17 without prior approval from his boss?"

18 A. His boss was within the chain, Mr. Jan Durham. He was --

19 Jan Durham is the assistant to Mr. Geoffroy who is above Lieutenant

20 Colonel Wright.

21 Q. Do you see where Colonel Kauzlarich writes what he said?

22 A. Yes.

1 Q. And, do you know why Colonel Kauzlarich wholeheartedly
2 believed that CW5 Galaviz with the best guy for the job?

3 A. I can only speculate that he knew that he was the senior
4 individual within the Marine Corps that was a corrections officer.

5 Q. Now you write back, "He is already approved -- or, already
6 have approval".

7 A. Yes.

8 Q. With an exclamation point?

9 A. Yes.

10 Q. Why do you use that?

11 A. Because that conversation that I had with Mr. Durham was a
12 request. The email that I sent to them, it states, "As previously
13 discussed on the phone last week, the attached letter is an advanced
14 copy for Galaviz." And so, that was based upon that discussion. The
15 Chief of Staff was not aware of that conversation that I had. He
16 assessed that Chief Warrant Officer Galaviz would be the best man for
17 the job and my reply back to him was, I already had the approval from
18 his boss.

19 Q. Right, but when I use an exclamation point, I am excited
20 about something. Were you excited about this?

21 A. The terms of the Chief of Staff being about a step or two
22 behind me, the different dialogue that we have had between the two of
23 them, he was normally very good, but that was one that I would say

1 that there was staff work that was done by me directly to Mr. Durham
2 because I was responsible for the 138. So, that exclamation point
3 was, that task is complete, I completed it.

4 Q. Okay, so you meant it as, it is done?

5 A. It is done.

6 Q. Okay. I would like to talk more about CW5 Galaviz for
7 moment. Now, CW5 Galaviz was involved in this case from really, day
8 one, correct?

9 [Pause].

10 Q. He was involved in getting PFC Manning even to Quantico
11 Brig?

12 A. Yes.

13 Q. In fact, he was involved in and copied on some of the most
14 -- many of the significant events involving PFC Manning?

15 A. Yes.

16 Q. And he was included on the emails where his bosses
17 obviously opined that Manning was being treated fairly?

18 A. The number of emails and how much, I cannot say, but from
19 some of the emails I have seen, he was, but not all.

20 Q. Okay. And, he was also included on emails where General
21 Amos, Major General Ary and others opined, including Lieutenant
22 General Flynn, that the Quantico Brig was doing everything right?

23 A. Yes.

1 Q. Did you believe that, based upon all that, he was really
2 somebody who, as you just said, was kind of an outsider of the
3 pretrial confinement facility and could give you an independence
4 assessment?

5 A. As the senior corrections officer in the Marine Corps, yes.

6 Q. Well, explain that to me because, I am not following. I am
7 retrieving 418N from the witness. Why would you think that he could
8 give you an independent assessment if all of his bosses are -- he is
9 included on emails from his bosses saying that everything is fine at
10 Marine Corps Base Quantico with regards to PFC Manning?

11 A. Seeing things on an email and seeing things in person are
12 two different things and I felt that if he came down and saw it
13 firsthand, he would give an honest assessment.

14 Q. And, you thought he would give an honest assessment in
15 spite of the fact that that Major General Ary, General Amos, General
16 Flynn, his three bosses all opined that everything was fine at
17 Quantico?

18 A. In terms of looking in hindsight and reviewing all of that,
19 that was not something that I would consider -- considered at the
20 time to have any impact and I still do not.

21 Q. Oh, so you would still not consider him to be somebody who
22 might be conflicted out of this?

23 A. No.

1 Q. Now, he certainly was not somebody that you would refer to
2 as an armchair quarterback, right?

3 A. No.

4 Q. Let us talk about the Article 138 complaint. On, 19
5 January 2011 ----

6 MJ: Yes? Hold on just a minute. Yes.

7 TC[MAJ FEIN]: Your Honor, the government only asks for probably
8 a 10 or 15 minute recess, it has been about an hour and a half.

9 CDC[MR. COOMBS]: I have no objection, Your Honor.

10 MJ: All right, so a quarter of, then

11 TC[MAJ FEIN]: Yes, Your Honor.

12 CDC[MR. COOMBS]: Yes, Your Honor.

13 MJ: All right, court is in recess until 4:45 or 1645.

14 **[The Article 39(a) session recessed at 1632, 27 November 2012.]**

15 **[The Article 39(a) session was called to order at 1650, 27 November**
16 **2012.]**

17 MJ: This Article 39(a) session is called to order.

18 Let the record reflect all parties present when the court
19 last recessed are again present in court.

20 Mr. Coombs?

21 CDC[MR. COOMBS]: Yes. Colonel Choike, I remind you, you are
22 still under oath.

23 WIT: Yes.

- 1
- 2
- 3
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Q. Colonel Choike, we left off talking just about -- we were about to get into the Article 138 response. So, let us talk about that. On 19 January 2011, you were provided, from the defense, the Article 138 complaint, correct?

Q. And you read that complaint?

Q. And you responded to the complaint on 1 March 2011?

A. Yes.

Q. Did you draft your own response?

A. My Staff Judge Advocate, Lieutenant Colonel Greer drafted it.

Q. All right. And, Colonel Greer actually on the following day, on the 20th January, sent you an email telling you that, "I think our time is better spent, meeting to discuss the response once I have had a chance to get a draft in front of you", correct?

A. Yes.

Q. And by this, is it accurate for me to say that Lieutenant Colonel Greer drafted your response at least initially without your input?

A. Yes.

1 Q. And, when did he provide you with that draft?

2 A. I don't recall.

3 Q. All right, can you tell me, once he gave you the draft,
4 what you did with it?

5 A. Read it thoroughly, had several meetings and discussions to
6 get it to the final product.

7 Q. Did you make any changes yourself to the draft?

8 A. Yes. There was some verbiage in a few paragraphs where
9 specifically I know that I spent time typing in wording in my words.

10 Q. Okay, so it was word-smithing just as far as the tone of
11 the response?

12 A. Content.

13 Q. Can you tell us what content you changed?

14 A. No, I can't recall very specifically but I know I spent
15 time at my computer looking in detail at some of the information that
16 he had listed in there that was not either completely accurate or
17 didn't fully describe the situation because he was not privy to that
18 information or did not have the details of that.

19 Q. Can you provide us with one example of that?

20 A. I can't without looking at the document.

21 Q. All right. Did you independently investigate any of the
22 facts that were within your -- the defense's Article 138 complaint?

23 A. Described, "Independent investigation".

1 Q. Yourself.

2 A. Reading weekly reports and talking to Colonel Oltman, if
3 you consider that independent investigation, yes.

4 Q. So after receiving the 138 complaint response -- or,
5 complaint, what I am asking is did you then, on your own, start
6 asking questions of people.

7 Q. And who did you ask questions of?

8 A. Colonel Oltman.

9 Q. Did you ever speak to Chief Averhart about the 138
10 complaint?

11 A. No.

12 Q. How about Doctor -- Captain Hocter or Colonel Malone?

13 A. No.

14 Q. And why didn't you speak to Captain Hocter or Colonel
15 Malone?

16 A. I was getting weekly updates from Captain Neill.

17 Q. No, I meant once you got the 138 complaint, why didn't you
18 go speak to Captain Hocter or Colonel Malone about what was inside
19 the complaint?

20 A. I didn't.

21 Q. And, could you tell us why?

1 A. I spoke with Captain Neill in terms of getting information,
2 in her weekly updates for information I'd had too. There was not a
3 requirement, I felt, to go talk to those two individuals.

4 Q. Can you tell us why you didn't speak to Chief Averhart
5 after receiving the 138 complaint?

6 A. Because his response would be thorough and in writing.

7 Q. So, instead of speaking to him about it, you believed that
8 you would just wait until he did a response?

9 A. That is correct

10 Q. Now, he did response on 24 January, did you actually then,
11 afterwards, speak to him?

12 A. No.

13 Q. And, why not?

14 A. His response spoke for itself.

15 Q. So, you thought he addressed all the issues in his 24
16 January response?

17 A. Yes.

18 Q. Now, you found that Chief Averhart did not abuse his
19 discretion and keeping PFC Manning in maximum custody and prevention
20 of injury, correct?

21 A. Yes.

22 Q. And, why do you believe that he did not abuse his
23 discretion?

1 A. It is his authority to ensure the health and welfare of all
2 of the detainees and to provide a proper, safe and secure
3 environment. That's what he does. That is what his job is.

4 Q. No, but you had a 138 complaint to you saying that PFC
5 Manning was saying, "Hey, I am in max and POI and I shouldn't be."
6 And, you determine that Chief Averhart did not abuse his discretion.
7 Why do you believe that he did not abuse his discretion in keeping
8 PFC Manning on Max and POI?

9 A. In part from his response and also from what Chief Warrant
10 Officer Galaviz had wrote in his response.

11 Q. Why did you believe that Max and POI was appropriate?

12 A. I believe that the Chief Warrant Officer Averhart was in
13 the best position to make that decision.

14 Q. Okay, but do you have any reason on your own why you
15 believed the Max and POI was appropriate based upon your 138
16 response?

17 A. Based upon the weekly updates that I received.

18 Q. Anything in, you know, specifics that you can give us?

19 A. Comments from the actual content from the reports from
20 Gunnery Sergeant Blenis or Staff Sergeant Jordan.

21 Q. And, what do you recall from that?

22 A. Their daily and weekly interaction with PFC Manning.

23 Q. Okay, and can you tell us what you recall?

1 A. Comments in regards to his actual behavior, interaction or
2 lack of interaction.

3 Q. Okay, and can you give us a specific, like what -- so I
4 know why you thought Max and POI was appropriate?

5 A. From the weekly reports, very specifically, what was
6 contained within there was information regards to the process. Not
7 only the interaction that they had specifically with PFC Manning but
8 also the process of the classifications and assignments process.
9 But, very specifically, Chief Warrant Officer Averhart utilizing the
10 staff and utilizing the classification and assignment process to gain
11 all information to make that decision.

12 Q. All right, let me approach it this way. What did you have
13 that you heard that you said to yourself, "These facts, in my mind,
14 warrant that he should be in Max and POI"?

15 A. His erratic behavior, the initial classification in regards
16 to the process in which they evaluate based upon the seriousness of
17 the charges, and these were bits and pieces from -- or information
18 from the SECNAV Instruction, the Navy Corrections Manual that talks
19 about the seriousness of the offense, the behavior, anything that
20 dealt with poor judgment from the past and poor or strained family
21 relationships.

1 Q. So, let's take some of those, because it seems like we have
2 some details. You said, erratic behavior, what was the erratic
3 behavior?

4 A. In his cell, acting out, playing peek-a-boo, licking the
5 bars on the cell itself, different dancing, erratic dancing. Those
6 are the ones that I recall.

7 Q. All right, so let us take those. The dancing and playing
8 peek-a-boo, do you know whether or not Colonel Malone or Captain
9 Hocter looked at those?

10 A. I can only assume that the interaction and dialogue that
11 they had between the staff and the physicians -- psychiatrists coming
12 in, yes.

13 Q. Did you ever receive a report that Captain Hocter and
14 Colonel Malone believed that that behavior was done by -- due to
15 boredom, being in his cell 23 hours a day?

16 A. No.

17 Q. Can you see, even being a layperson, can you see how
18 somebody in a six by eight cell, out of boredom, might dance or do
19 various things to keep his mind occupied?

20 A. It's possible.

21 Q. And you said the, "licking the bars". What do you recall
22 from that?

23 A. Just the description of that.

1 Q. Do you recall when that was alleged to have occurred?

2 A. November timeframe.

3 Q. Of 2010?

4 A. Yes.

5 Q. And, with regards to that, do you recall Captain Hocter
6 opining that, if it did in fact occur, that was when he was
7 sleepwalking?

8 A. No.

9 Q. Did you ever receive any information that he was on
10 medication that caused sleepwalk?

11 A. No.

12 Q. Did you receive information as to the fact that the guards
13 who believe they saw this, saw it at night and woke him up and he
14 appeared startled at the time he was woken up?

15 A. No.

16 Q. So, you did not have any context to licking the bars other
17 than, licking the bars?

18 A. That's not the only thing. In that regard, the initial
19 information in terms of classification for maximum custody came with
20 the documentation that -- in which we received him early on. So when
21 you are talking about that process of determining, there is a
22 timeline that we are talking about here. So, anywhere within those

1 incidents that I am talking about right now happened within a
2 specific timeline.

3 Q. Okay, and what time under those incidents happen?

4 A. I assume -- or, I recall, in the November timeframe. But,
5 when you are talking about maximum custody, initially, as far as his
6 assignment to and whether or not it is justified, had to do with the
7 seriousness of the charges, the behavior in which he displayed at the
8 previous location in Kuwait, the fact that he was already on suicide
9 risk when we received him and the fact that the doctor saw him on a
10 daily basis for the first 10 or 11 days that he was received and
11 agreed that he should be in maximum custody/suicide risk.

12 Q. All right, so, let us break all of these down. So, we'll
13 do this in two ways: stuff that you knew before he came to you that
14 might warrant being in max and even suicide risk when he first gets
15 there, and stuff that happens since he has arrived. You said you
16 looked at the weekly reports?

17 A. Yes.

18 Q. Did you see where week after week it was reported that he
19 had no disciplinary reports?

20 A. Yes.

21 Q. Did you see week after week where it was reported where he
22 had no adverse spot evaluations?

23 A. Yes.

1 Q. Did you see week after week where it was reported that he
2 had an average work performance and training?
3 A. Yes.
4 Q. Did you see week after week when it was reported that he
5 was polite, respectful and courteous to the staff?
6 A. Yes.
7 Q. Did you see week after week where it was reported that he
8 was adjusting well to confinement and was having no issues?
9 A. Yes.
10 Q. Did you see week after week where the mental health
11 professionals were recommending that he be taken off of POI?
12 A. Yes.
13 Q. All right, so, what did you see after looking at all that
14 that, in your mind, said, "You know what, he needs to be on POI"?
15 A. Detailed descriptions from Gunny Blenis, the Programs
16 Chief, stating conversations or lack of conversations that he has
17 had, him being depressed, withdrawn.
18 Q. When is this, I mean can you give me a context for the time
19 period?
20 A. Throughout his entire stay for the most part.
21 Q. All right, so you, from your memory, the entire stay, Gunny
22 Sergeant Blenis is saying that he is depressed, withdrawn?

1 A. Not in each -- not in each case. There were times that he
2 wrote that he was more talkative. That there were different events
3 but then there were other times where there were dips in that regard.

4 Q. Okay.

5 A. Dips in his attitude or his willingness to be able to
6 participate in conversation.

7 Q. All right, so dips in somebody not wanting to talk, and
8 then, was there something else from Blenis?

9 A. No.

10 Q. All right, so the fact that he was not so much of a
11 talkative detainee, that was one of your reasons why you are going to
12 put him in POI?

13 A. No, I am not the individual that puts him in POI.

14 Q. One of the reasons for you believed POI was appropriate?

15 A. One of the reasons that POI is appropriate has to do with
16 the evaluation that you get from the classification and assignment
17 board. It is not strictly just from the weekly updates. There is a
18 process in which the C and A Board meets. They discussed the
19 journals, which I did not how privy or copy to, his day-to-day
20 actions. I am only referring to things that I recall and only things
21 that are written down in a weekly report, but the process of a C and
22 A board meeting and advising Chief Warrant Officer Galaviz,
23 collectively, what he feels the assignment should be.

1 Q. And, I am just trying to get at your specifics of why you
2 believed Chief Averhart did not abuse his discretion. So, we got
3 some "odd behaviors". We talk about those. We have got, "not so
4 talkative". You also said, "depressed", where did you think there
5 was documentation that he was depressed?

6 A. Comments from Gunny Blenis within the weekly reports.

7 Q. And how frequently, from your memory, do you think Gunny
8 Blenis said he was depressed?

9 A. It was probably more frequent than not.

10 Q. And that is your memory?

11 A. Yes.

12 Q. Okay. Anything else during this time when he was at the
13 Quantico Brig?

14 A. No.

15 Q. Okay. Now let us talk about the stuff that happened before
16 he got there. You said you were aware of the fact that he came to
17 you on suicide risk?

18 A. Yes.

19 Q. And you said, "Hey, the doctors looked at him for, you
20 know, 10 or so days consecutively and they were making
21 recommendations that he stay on maximum and suicide risk"?

22 A. Yes.

23 Q. And, you were listening to the doctors?

1 A. Yes.

2 Q. And, these same doctors then within a couple of weeks
3 started making recommendations to pull him off of POI?

4 A. Yes.

5 Q. And, you were not listening to the doctors?

6 A. It was not my position to listen to them, that was Chief
7 Warrant Officer Averhart's responsibility.

8 Q. Sure, but he was briefing that up to you that he wasn't
9 listening to the doctors then?

10 A. No, he did not brief that to me. He was taking that into
11 account.

12 Q. Well, in his weekly reports to you he would say what the
13 doctors recommended and what his ultimate disposition was, right?

14 A. Yes, after conferring with the C and A board.

15 Q. Sure. And that C and A board is made up of some of the
16 guards at the Facility?

17 A. Not the guards; the staff NCOs, the Program Chief, the
18 Operations Chief, the Security Chief, the Admin Chief ----

19 Q. At the Facility?

20 A. At the Facility, yes.

21 Q. Okay. So, what -- after getting the doctors making the
22 recommendation to take him off of POI, did you ever ask Averhart why
23 that recommendation did not cause him to remove him from POI?

1 A. Never asked him directly but looked at the SECNAV
2 Instruction. When we are talking about the August time-frame it was
3 the same time that there was correspondence between myself and
4 General Flynn. I had no knowledge previously up to that particular
5 point. I did my own research in terms the SECNAV Instruction stated
6 as well as looked at with the Brig SOP stated. And, the Brig SOP was
7 forwarded to General Flynn. And, Brig SOP clearly stated that the
8 Brig OIC has the authority to take all information and to make the
9 decision in terms of ultimately what his classification and
10 assignment is.

11 Q. Yeah, that is true, but in the 138 complaint you're being
12 asked to review that decision, right?

13 A. Yes.

14 Q. Okay, so, what did you look at other than the SECNAV
15 telling you that hey this -- the OIC can make this call. What did
16 you look at to see if he had abused his discretion?

17 A. The comments coming from Chief Warrant Officer Averhart in
18 the weekly reports. And I also looked at Chief Warrant Officer
19 Galaviz information.

20 Q. Okay. All right, so the weekly reports now, let us talk
21 about -- we talked about in relation to suicide risk or POI, let's
22 talk about in relation to max. Maximum custody under the SECNAV
23 Instruction is you are aware of, probably, after reviewing it, is for

1 the violent and dangerous detainees or escape risk detainees,
2 correct?

3 A. Yes.

4 Q. And the SECNAV Instruction talks about the fact that only
5 very few detainees should be on max because of the fact that it is a
6 resource drain on the Brig?

7 A. Yes.

8 Q. And, also talked about the fact that max detainees are
9 again, are for those that are very violent, very dangerous or high
10 escape risks, correct?

11 A. Yes.

12 Q. Now, during the time that PFC Manning got there, from 29
13 July, and let's just go to the date of December. So, there is a good
14 six-month period of time almost. Did PFC Manning ever try to escape,
15 to your knowledge?

16 A. No.

17 Q. Did PFC Manning ever assault any guards to your knowledge?

18 A. No.

19 Q. Did he ever try to assault anybody to your knowledge?

20 A. No.

21 Q. Was he disrespectful to anyone to your knowledge?

22 A. I think I recall one occasion where it was in a report,
23 yes.

1 Q. Tell us about what you recall?

2 A. Where he was given instructions and he acted out.

3 Q. Oh, you are talking about the 18 January incident?

4 A. Yes.

5 Q. Okay, I am talking, up to December?

6 A. No.

7 Q. So, any place where he was disruptive at all?

8 A. No.

9 Q. So, what were you looking out between basically the time
10 that he got there to the time that you got the complaint to say that
11 those month time periods where he was there that max was an
12 appropriate classification for him?

13 A. The seriousness of his charges, the past behavior where he
14 showed the possibility of inflicting harm on himself. Poor judgment
15 in terms of what was associated with the charges as well as issues
16 that dealt with information in terms of his relationship with his
17 family.

18 Q. Okay, so let's break those down. So, his seriousness of
19 the charges, why was that an important factor for you?

20 A. It was not an important factor for me, it was for the most
21 part what he was being charged with. I mean, the very fact of what
22 he did and what he was facing.

1 Q. Well, I'm going through factors you have just listed for
2 why you thought max appropriate?

3 A. Yes.

4 Q. So, seriousness of the charges, why did you think that was
5 a factor for max being appropriate?

6 A. SECNAV Instruction says that is one of the criteria.

7 Q. Okay. And, that was your only basis?

8 A. Yes.

9 Q. All right. And then, you then said also, his family
10 relations, what was that?

11 A. That is also the SECNAV Instruction.

12 Q. No, but, tell me what was that factor for you?

13 A. That factor was for me, it was just information that was
14 presented at the time that he was received.

15 Q. Okay. And then, what were the other two factors? I know
16 you had two more?

17 A. His display of poor judgment and poor behavior that led to
18 suicide intentions.

19 Q. Okay, so poor judgment and poor behavior, that is all
20 talking about stuff that happened before he got to you?

21 A. It is associated with charges.

1 Q. No, I know, but you are not saying poor behavioral or poor
2 judgment during the time period that he is in your confinement
3 facility?

4 A. Correct.

5 Q. All right, so that is all before. So, I'm looking at those
6 factors, I see the seriousness of the charges; you would agree with
7 me that he can't do much about that?

8 A. That's correct.

9 Q. The poor family relationships, you would agree, I guess he
10 might be able to do something about that but some people have poor
11 family relationships, right?

12 A. Correct.

13 Q. And, the conduct in Kuwait, that was stuff that got him in
14 suicide risk, appropriately so, and probably kept him in that when he
15 first got to you but he cannot really do anything about what he did
16 in the past?

17 A. Yes.

18 Q. So, those are the factors you are looking out for max?

19 A. Yes.

20 Q. Okay. All right, so let's continue. Did you inform
21 Lieutenant General Flynn about the Article 138 complaint?

22 A. Yes.

23 Q. And, what did you tell him?

1 A. There was not any specific conversation. He knew through
2 legal channels. Colonel Greer talked, I am sure, quite frequently
3 with Colonel Miner but there was no personal conversation that I had
4 with General Flynn that I recall.

5 [The court reporter marked Appellate Exhibit 4180.].

6 Q. I am handing you what's been marked as Appellate Exhibit
7 4180; if you would look at that for a moment.

8 [The witness reviewed the exhibit.]

9 Q. This is an email from Mr. Geoffroy, one of CW5 Galaviz'
10 bosses to you, dated 21 January 2011. And, at the the very top and
11 it simply states, "As discussed", do you see that?

12 A. Yes.

13 Q. Do you know what you discussed with Mr. Geoffroy?

14 A. I don't recall.

15 Q. All right, can you look down at the email below, apparently

16 ----

17 A. That is what, I just spent a lot of time reading it. I am
18 having a hard time finding the connection between Major General Ary
19 speaking directly to General Flynn who has Mr. Geoffroy and the
20 lawyers, yours and Colonel Miner.

21 Q. Let's talk about that lower email. Do you know why major
22 General Ary would be discussing the PFC Manning Article 138 complaint
23 with General Flynn?

1 A. No.

2 Q. And Major General Ary apparently received his copy of the
3 138 complaint from the Lieutenant General Chipman, do you see that?

4 A. Yes.

5 Q. And, Lieutenant General Chipman is the Judge Advocate
6 General of the United States Army, do you see that?

7 A. Yes.

8 Q. Do you know why Lieutenant General Chipman would be
9 dropping off a copy of the complaint to Major General Ary?

10 A. No.

11 Q. Was there any discussion between you and General Flynn
12 about the 138 complaint after this email?

13 A. No.

14 Q. Did you talk to Lieutenant Colonel Greer about this?

15 A. I did in the manner in which I wrote the email. It says,
16 "Has Colonel Miner brought you in the loop", in this email.

17 Q. Yeah, what did you talk to Lieutenant Colonel Greer about,
18 with this?

19 A. I don't recall.

20 Q. Now, Lieutenant Colonel Greer is your SJA, right?

21 A. Yes.

22 Q. So at this point, you do not recall what you discussed with
23 Mr. Geoffroy or what you discussed with Lieutenant Colonel Greer?

1 A. No, I do not. I mean, Lieutenant Colonel Greer and I have
2 worked -- as previously stated on the Article 138. What the lawyers
3 did behind the scenes in terms of sharing information, I was not
4 privy to. I don't recall why Mr. Geoffroy would have said, "Sent
5 this as discussed", other than the fact that there was an email that
6 I did send Mr. Geoffroy that I recall very specifically about
7 assisting in the sharing -- or the funneling of information because
8 we were getting hit from many different angles and that the request
9 for information that I asked for from Mr. Geoffroy's assistance to be
10 able to -- to at least funnel things through, to let me know. And,
11 this could be as a result of that email that I sent him. In this
12 email of me sending it to Chris it asking if he was brought into the
13 loop, probably because just as I was not included in terms of why
14 General Ary would talk to General Flynn directly and Mr. Geoffroy, I
15 am not sure why. And I wanted to know if Chris did because that is
16 not something he spoke to me about.

17 Q. Okay. And so, you say -- I am retrieving 4180 from the
18 witness. When you say you cannot recall, it would be fair to say
19 that you do not recall because it has been a long time?

20 A. That email chain does not make any sense.

21 Q. And that is because it has been a long time?

22 A. It is, in part, yes. But in reading it, doesn't make any
23 sense in terms of the flow.

1 Q. Sure, but at the time though of receiving that email, it
2 would have made sense though?

3 A. It would have at the time, yes.

4 Q. Now, one of the issues in the Article 138 complaint is the
5 fact that on two separate occasions Chief Averhart kept PFC Manning
6 on suicide risk over the recommendations of Captain Hocter, correct?

7 A. Yes.

8 Q. And you believed at the time that Chief Averhart, by doing
9 that, he had the authority to do so?

10 A. Yes.

11 Q. And, at the time of your 138 response, you believed that it
12 was appropriate for Chief Averhart to have kept PFC Manning on
13 suicide risk over the recommendations of Captain Hocter?

14 A. Yes.

15 Q. And, even now, I guess, as you sit there on the stand, you
16 still believe it was appropriate?

17 A. Yes.

18 Q. But, I guess between -- at the time of Chief Averhart doing
19 this and now, you may have been made aware of the SECNAV Instruction
20 on this, haven't you?

21 A. Yes.

22 Q. And, you were told, and it is under the SECNAV Instruction
23 1640.9(c), and it states, "When prisoners are no longer considered to

1 be a suicide risk by a medical officer, they shall be returned to
2 appropriate quarters"?

3 A. Yes.

4 Q. You are aware of that, right?

5 A. Yes.

6 Q. And, if I understand you correctly, you believe that just
7 because the SECNAV Instruction says, "shall be done", that that does
8 not mean immediately?

9 A. Those are the words that Chief Warrant Officer Galaviz used
10 was, "immediately", and I non-concurred with that in my Article 138
11 response.

12 Q. So, is your answer that because the SECNAV Instruction
13 says, "shall be done", that that does not mean immediately to you?

14 A. Yes.

15 Q. You believe that that leaves some interpretation as to when
16 a detainee needs to be taken off of suicide risk?

17 A. Not interpretation, it left it to the process that Chief
18 Warrant Officer Averhart was using the classification and assignment
19 board to meet to get information. It included what the doctor had
20 recommended and observations from his board, to make -- ultimately
21 make the decision.

22 Q. All, CW5 Galaviz said that, "shall be" means immediately,
23 right?

1 A. That is what he said.

2 Q. You believed immediately, or "shall be done" does not mean,
3 immediately?

4 A. That is correct.

5 Q. So, that would leave it open to interpretation in your
6 mind?

7 A. Yes.

8 Q. And Chief Galaviz concluded that CW4 Averhart violated the
9 SECNAV Instruction by not immediately removing PFC Manning from
10 suicide watch?

11 A. He was not following solely the SECNAV Instruction. He was
12 following the Brig SOP which stated that he has the authority to take
13 that information into account, then to make the decision.

14 Q. Listen my question. My question was, "Chief Galaviz
15 concluded that CW4 Averhart violated the SECNAV Instruction by not
16 immediately removing PFC Manning from suicide watch?"

17 A. He did not adhere to it.

18 Q. So that is a yes?

19 A. Yes.

20 Q. And, as we covered, you disagree with Chief Galaviz?

21 A. Yes.

1 Q. And, even at this time, and even after having the ability
2 to see the 138 response, you still believe that Chief Averhart did
3 nothing wrong?

4 A. Correct.

5 Q. Now, on 2 March 2011, you were informed by Lieutenant
6 Colonel Greer of additional charges being referred against PFC
7 Manning, correct?

8 A. Yes.

9 Q. And, Lieutenant Colonel Greer found out about these new
10 charges on the same day that he informed you?

11 A. Yes.

12 Q. And you believed that you did not have sufficient notice
13 from the Army regarding these additional charges?

14 A. That's correct.

15 Q. And why did you feel that way?

16 A. In an effort to ensure that all of the appropriate medical
17 staff, as well as Brig staff, were advised because it could
18 potentially mean that there was going to be an outbreak and change in
19 behavior in PFC Manning.

20 Q. Okay. And, you were also, in addition to the charges, you
21 were aware your Article 138 response was going to be served on PFC
22 Manning?

23 A. Yes.

1 Q. And based on your review of the 138 response, you knew that
2 that was going to be denying the relief that PFC Manning was seeking.

3 Q. I am not sure the connection.

4 Q. What I am saying is based upon the fact you knew what your
5 138 response was, you knew that the 138 response would notify PFC
6 Manning that his requested relief was being denied?

7 A. Yes.

8 Q. And that he would remain on max and POI?

9 A. Yes.

10 Q. You then sent an email saying that you believe that the new
11 charges and the 138 response would cause the Brig Marines to be on a
12 heightened state of awareness, do you recall that?

13 A. Who wrote that?

14 Q. You.

15 A. I do not recall that.

16 [The court reporter marked Appellate Exhibit 418P.]

17 Q. I am handing the witness what has been marked as Appellate
18 Exhibit 418P. If you would take a look at the bottom email?

19 A. Yes.

20 Q. You see where you state there that you believe the new
21 charges and your 138 response would cause the Brig Marines to be in a
22 heightened state of awareness?

23 A. Yes.

1 Q. And, this is when Lieutenant Colonel Greer informed you
2 that Chief Barnes had determined that she would remove PFC Manning's
3 underwear due to comments made by him to Brig staff?

4 A. Yes.

5 Q. Lieutenant Colonel Greer, your SJA, then writes, as Dr.
6 Seuss would say: "I can wear them in a box, I can wear them with a
7 fox. I can wear them in the day, I can wear them so I say, but I
8 can't wear them at night, my comments gave the staff a fright." Do
9 you see that?

10 A. Yes.

11 Q. Did you believe that the removal of PFC Manning's underwear
12 was something to be joked about?

13 A. No.

14 Q. When Lieutenant Colonel Greer told you about the decision
15 to strip Private Manning at night, he said, "This may become another
16 media issue as Manning may bring it up with his attorney." Do you
17 see that?

18 A. Yes.

19 Q. I am retrieving 418P from the witness. Now you wanted
20 Colonel Rick Malone to be present when PFC Manning was informed of
21 the new charges and your 138 response, correct?

22 A. Yes.

1 Q. And Colonel Rick Malone was at that time, the forensic
2 psychiatrist for the Brig?

3 A. Yes.

4 Q. He had replaced Captain Hocter?

5 A. Yes.

6 Q. And you said in an email to Colonel Kauzlarich, your Chief
7 of Staff, stating that we need to, "Get a full court press from our
8 medical professionals to assist us in getting Colonel Malone down
9 here ASAP"?

10 A. Yes.

11 Q. Do you recall that?

12 A. Yes.

13 Q. And what did you expect Colonel Kauzlarich to do?

14 A. To be able to make contact with his chain of command to
15 figure out the whereabouts of Doctor Malone.

16 Q. And Colonel Malone, to your knowledge, was scheduled to see
17 PFC Manning on March 4th?

18 A. Yes.

19 Q. And you wanted him to be seen on the 3rd, right?

20 A. I wanted him to be seen on the day that the charges were
21 preferred.

22 Q. And, why were you so concerned in getting Colonel Malone to
23 see PFC Manning on March 3rd?

1 A. Because of the seriousness of the charges and the charges -
2 - I believe one of the charges had either life or death as a part of
3 the maximum punishment.

4 Q. Okay, and so, you believe that the fact that Colonel Malone
5 wasn't present was problematic?

6 A. Yes.

7 Q. And you also believe that this was due to not receiving
8 sufficient advance notice of the additional charges?

9 A. Yes.

10 Q. Now, on 4 March, you sent Lieutenant General Flynn an email
11 notifying him of the decision to remove PFC Manning's underwear at
12 night, do you recall?

13 A. Yes.

14 Q. And along with your email, you sent a copy of the New York
15 Times article that discussed the requirements of PFC Manning to stand
16 outside of the cell naked, do you recall that?

17 A. Yes.

18 Q. And you informed General Flynn that Colonel Malone would be
19 seeing PFC Manning on that day?

20 A. Yes.

21 Q. And Lieutenant General Flynn responded to you to within 6
22 minutes of you sending your email that, "It would be good to have the

1 leadership have a heads-up on these types of things before they are
2 read in the Early Bird." Do you recall that?

3 A. Sure do.

4 Q. And he used an exclamation point on that?

5 A. Yes.

6 Q. And the Early Bird is basically a military synopsis of all
7 of the news stories from various press releases, right?

8 A. Yes.

9 Q. And that is what commanders usually would use to see what
10 the news is of that day?

11 A. Yes.

12 Q. Now, how do you interpret Lieutenant General Flynn's email
13 to you that it would be nice for the leadership to have a heads up on
14 these types of things?

15 A. Because he was not informed. He read it in the newspaper.
16 That was his first account.

17 Q. All right. So, he wanted to be informed of those details
18 ahead of time?

19 A. He wanted to be informed from the chain of command before
20 he read it in the newspaper, yes.

21 Q. All right. And, what did you believe Lieutenant General
22 Flynn was concerned about at this point?

1 A. His concern was not being able to answer from senior
2 officials asking questions, senior officers asking questions of him.
3 Q. Okay, so he was getting questions from people above him?
4 A. Yes.
5 Q. And so, I imagine that he was caught blindsided not knowing
6 what the issue was?
7 A. Yes.
8 Q. Now, later that same morning, you received an update on the
9 status medical support for PFC Manning from Captain Neill, do you
10 call that?
11 A. On what day?
12 Q. That same morning, that would be on March 4th?
13 A. Yes.
14 Q. And she informed you that she was able to speak with
15 Colonel Malone on 3 March to express the command's concerns regarding
16 PFC Manning?
17 A. Yes.
18 Q. She also informed you that Colonel Malone told her that,
19 "From a medical perspective, there was no cause for urgency or
20 emergency"?
21 A. Yes.

1 Q. And, he basically said what was conveyed to him from the
2 Brig Duty Corpsman did not cause him to be concerned as the forensic
3 psychiatrist?

4 A. He was not there personally and he was basing that upon a
5 phone call.

6 Q. Okay, but my question was, he informed Captain Neill that
7 he was not concerned based on what he was told?

8 A. That is correct, yes.

9 Q. Now, Captain Neill conveyed to you that she was not
10 satisfied with Colonel Malone's response?

11 A. Yes.

12 Q. And she told you that she was diligently working through
13 the medical channels to convey this sense of urgency, the heightened
14 risk and the visibility of this case?

15 A. Yes.

16 Q. Did you understand what Captain Neill meant by, "Sense of
17 urgency and heightened risk"?

18 A. The sense of urgency was a sense of urgency that I had
19 placed upon her to try and get Doctor Malone or someone that was
20 qualified to come down to see PFC Manning.

21 Q. And what about the heightened risk?

22 A. The heightened risk had to do with his behavior and the
23 potential risk for suicide.

1 Q. Okay. And, did you understand what Captain Neill meant by,
2 "visibility of this case"?

3 A. No.

4 Q. 20 minutes after receiving Captain Neill's email, you sent
5 a follow-up email to Lieutenant General Flynn, do you recall that?

6 A. Well, it will be that visibility, the visibility of senior
7 officials, yes.

8 Q. Okay, you informed Lieutenant General Flynn that Colonel
9 Malone had not arrived yet at the Brig?

10 A. Correct.

11 Q. You also informed him that Colonel Coffman had not returned
12 your calls or your messages from the previous day or the message that
13 you sent on that day?

14 A. Yes.

15 Q. And Colonel Coffman was the Army Convening Authority for
16 the case of the time?

17 A. Yes.

18 Q. You told General Flynn that Colonel Malone did not believe
19 that the perceived issue with PFC Manning was either a pressing or
20 emergent issue, correct?

21 A. Yes.

1 Q. And, you then told Lieutenant General Flynn that Captain
2 Neill's assessment captured the essence of the issue dealing with the
3 Army medical health support?

4 A. Yes.

5 Q. At this point, you were even considering transporting PFC
6 Manning to Walter Reed?

7 A. I could not make that call.

8 Q. Didn't you indicate that you were considering transporting
9 him to Walter Reed at that point?

10 A. If we could not receive a psychiatrist to come down to
11 provide the appropriate mental health care, yes.

12 Q. And so, when you were considering that, Walter Reed would
13 be the site for it -- at Walter Reed?

14 A. Yes.

15 Q. Now, you did inform General Flynn when Colonel Malone
16 actually did go see PFC Manning, right?

17 A. When who did?

18 Q. When Colonel Malone.

19 A. Yes.

20 Q. And you told General Flynn that Private Manning was doing
21 well, appeared in good spirits and had been taken off of medication
22 for anxiety disorder due to its improved status?

23 A. Yes.

1 Q. You also informed General Flynn that PFC Manning, "Recent
2 actions and statements are not related to any mental disorder?"

3 A. Yes.

4 Q. And what did you mean by that?

5 A. That was just based upon the information that came from
6 Doctor Malone.

7 Q. And what did you understand that information to mean?

8 A. To be honest with you, I do not know. I am not a forensic
9 psychiatrist. I am just relaying the information that was relayed to
10 me through the staff.

11 Q. Okay, so when Colonel Malone says the recent actions and
12 statements were not related to any mental disorder, you weren't for
13 sure what he was talking about?

14 A. Well, there was ongoing treatment the entire time and I
15 wasn't privileged to exactly the treatment that he was given, the
16 prescriptions were taking place, the dialogue that took place between
17 Colonel Malone and Captain Hocter prior to. I was not privy to this
18 information between the information between the doctors and the
19 patient.

20 Q. I understand that, but you are being informed the recent
21 actions and statements are not related to any mental disorder. You
22 did not understand what they meant by that?

1 A. Yes. For the outburst and from PFC Manning and then for
2 the doctor to be able to take him off the medication, the way I took
3 it that there was no connection between that type of treatment that
4 he was receiving and his outburst from receiving the additional
5 charges.

6 Q. Okay. You told General Flynn that PFC Manning's recent
7 comments and behavior have the entire Brig staff concerned?

8 A. Yes.

9 Q. And why did you believe that the entire Brig staff was
10 concerned?

11 A. They would be concerned because they were words about how
12 to commit suicide.

13 Q. And, what did you understand the words being?

14 A. To use the waistband of his underwear or flip flops.

15 Q. Okay, and what were you told that PFC Manning said and how
16 he said it?

17 A. That, if I recall specifically, I have everything that I
18 need right here to be able to harm myself. The waistband of the
19 underwear can do this.

20 Q. Were you told that at the time of the conversation that
21 this statement came out that PFC Manning speaking to Master Sergeant
22 Papakie?

23 A. Yes.

1 Q. And, actually if you could correct me on this and see if it
2 is right, is it P-A-P-A-P-K-I-E or P-A-P-A-K-I-E?

3 A. P-A-P-A-K-I-E.

4 Q. P-A-P-A-K-I-E, okay thank you. So, at the time, were you
5 informed that Master Sergeant Papakie was speaking to PFC Manning and
6 PFC Manning was saying, "Hey, I just want to know why I am still on
7 POI and what I can do to get off of POI." Were you told about that?

8 A. Yes.

9 Q. And, that's when PFC Manning said, "Look, you know, this is
10 kind of absurd, but if I wanted to, if I really wanted to harm
11 myself, I could do so with the waistband of my underwear or my flip-
12 flops?

13 A. Yes.

14 Q. And, were you informed that at the time that PFC Manning
15 said that he was smiling?

16 A. No, I was not.

17 Q. Okay, were you informed at the time PFC Manning said that,
18 it was just a general conversation?

19 A. No.

20 Q. Were you informed at the time that PFC Manning said that,
21 that Master Sergeant Papakie did not say anything to him to indicate
22 that he was alarmed or troubled by the statement?

1 A. He was alarmed because he went to Chief Warrant Officer
2 Barnes and her thoughts were, the fact of the original statement when
3 he was brought in, where he said -- asked about suicidal thoughts or
4 ideations, "always planning, never acting".

5 Q. Again, listen to my question though, Colonel Choike, were
6 you informed that at the time that PFC Manning made that statement to
7 Master Sergeant Papakie, that he did not indicate to PFC Manning in
8 any way that he was alarmed or upset?

9 A. No, I was unaware of that.

10 Q. And so, then after apparently getting this statement
11 reported to you, did you speak to Chief Barnes about the statement?

12 A. No.

13 Q. Did you speak with Master Sergeant Papakie?

14 A. No.

15 Q. Did you speak with Colonel Oltman about the statement?

16 A. Yes.

17 Q. And, what did you say to him?

18 A. His comments were more of one briefing to me to put content
19 or context to what was being reported.

20 Q. Okay, and what context or content did he report to you

21 A. Just describing the fact that it was reported to Master
22 Sergeant Papakie and he informed and contacted Gunny Blenis and they
23 had briefed Chief Warrant Officer Barnes on the information, the

1 actions that were taking place, the things that were said. His
2 actions and conduct also that led up to those -- that discussion
3 between him and Master Sergeant Papakie. Colonel Oltman had filled
4 in, I guess, the information in terms of what took place between the
5 staff at the Brig.

6 Q. So am I correct in saying that the knowledge that you had,
7 you only got from Colonel Oltman?

8 A. Yes.

9 Q. And then, do you know where Colonel Oltman got his
10 information?

11 A. Directly from the Brig staff.

12 Q. And that would be?

13 A. Chief Warrant Officer Barnes, Master Sergeant Papakie and
14 Gunny Blenis, he would frequently go down there and visit or talk to
15 them on the phone.

16 Q. And again, just for our edification, the reason why Colonel
17 Oltman would do that was because he was the Security Battalion
18 Commander, right?

19 A. Security -- Within the chain of command, yes.

20 Q. And so, he had oversight of the Brig, correct?

21 A. Yes.

22 Q. Now, did you believe that Colonel Malone, the forensic
23 psychiatrist, was also concerned about these comments?

1 A. The comments from who?

2 Q. The ones we are referring to, the comments about the
3 underwear from PFC Manning?

4 A. Yes.

5 Q. You believed that he was also concern about it?

6 A. No, I do not believe that.

7 Q. And what do you -- what knowledge do you have to say ----

8 A. I don't have any knowledge of him having a statement or
9 making a statement that he would be concerned.

10 Q. Okay, were you informed that Colonel Malone said that that
11 statement was just PFC Manning intellectualizing the absurdity of the
12 POI conditions?

13 A. No.

14 Q. Now, you did know -- so you were never told about that?

15 A. No.

16 Q. Would that have made a difference to you if you knew that
17 the forensic psychiatrist was saying that this was just a statement
18 about the absurdity of the conditions?

19 A. It was not absurd to the people there at the Brig who spent
20 24 hours a day, 7 days a week, and from the person, the Brig OIC that
21 is in charge, no. I wouldn't say it was absurd because of their
22 comments and their concerns.

1 Q. No, no, no, what I said was, would it be significant to you
2 if the Brig psychiatrist told you that, "Look this was just PFC
3 Manning commenting on how absurd the conditions were and not
4 indicating an intent to do anything"?

5 A. Again, you are asking me, the absurdity of the conditions
6 of people being there 24/7, being a part of what was actually in the
7 act of happening and someone that was coming in after a later point
8 in time and assessing that it is not that bad. Did you see what I am
9 saying?

10 Q. I don't, but let me rephrase it to see if maybe my
11 confusion -- my question is confusing. For you, would make a
12 difference to you if you heard from the Brig psychiatrist, you know,
13 the subject matter expert, that the statements that were made were
14 not a statement of intent to harm one's self but simply a statement
15 of intellectualizing the absurdity of the conditions. Would that
16 make a difference to you if that's the report you got from the
17 forensic psychiatrist?

18 A. It wouldn't make a difference to me. The important thing
19 is would it make a difference to Chief Warrant Officer Barnes?

20 Q. Well, you are also reviewing this under the 138 complaint,
21 so I am asking you, from your perspective.

22 A. Yes.

23 Q. Would that make a difference to you?

1 A. No.

2 Q. And, why not?

3 A. Because of the amount of information that came from staff,
4 the Brig staff.

5 Q. Okay. So that information, in your mind, would outweigh
6 the forensic psychiatrist telling you that it was not a statement of
7 intent to harm?

8 A. Would not weigh, it would be taken into account. It would
9 be taken into account. Again, I am going off of exactly how the
10 actions took place, who observed it, how it was reported and where
11 Doctor Malone was in this whole process.

12 Q. Okay, we will talk about the doctors in a moment more, I
13 guess. Let me go back to some other facts to see if you are aware.
14 You indicated, or at least you saw an email, where PFC Manning was
15 being removed from his medication. Do you recall that?

16 A. Yes.

17 Q. And, that was a medication for any anxiety, correct?

18 A. Yes.

19 Q. And, do you know why he was being removed from his
20 medication?

21 A. No.

22 Q. Were you informed that he was being removed because of the
23 fact that, you know, he no longer needed it?

1 A. It may have been written in the weekly update, yes.

2 Q. Now, you informed Lieutenant General Flynn that PFC Manning

3 would remain in the same status, Max and POI, correct?

4 A. Yes.

5 Q. You also informed Lieutenant General Flynn that PFC

6 Manning's handling instructions would remain the same?

7 A. Yes.

8 Q. This meant that he would be required to strip at night?

9 A. Yes.

10 Q. And you did not change the handling instructions after

11 Colonel Malone's assessment?

12 A. Is not my position to change the handling instructions,

13 that is the Brig OIC's responsibility.

14 Q. Well, as an installation commander, you have the authority

15 to tell the Brig OIC what to do, right?

16 A. No, I do not.

17 Q. You believe you have the authority?

18 A. I am overall responsible for, but I wouldn't act upon that

19 authority because I am not there.

20 Q. Again, listen to my question. As the Base Commander, you

21 have the authority to tell Chief Averhart or Chief Barnes what to do?

22 A. I have the responsibility, but the authority, the

23 authority, I don't believe I have that, to direct specifically the

1 Brig OIC for classification and assignment instructions because I am
2 not there. Now whether or not it is written that way, that I had the
3 authority, personally I feel I did not have the authority to make
4 that call.

5 Q. Do you recall telling me that just the opposite; that you
6 believed you personally had the authority to make that call?

7 A. I recall telling you very specifically that I was
8 responsible as the Installation Commander but not having the
9 authority to make that call.

10 Q. Okay, so, now your testimony is you have the responsibility
11 but not the authority?

12 A. Overall I am responsible. Overall I am responsible, but to
13 actually make decisions that deal with a detainee in the Brig, I did
14 not act upon or think that I had that authority to be able to do
15 that, no.

16 Q. So, if I understand your testimony that your testimony, as
17 the Marine Corps Base Quantico Installation Commander, you could not
18 say to the Brig OIC to do something because you did not have the
19 authority when it came to a detainee?

20 A. If it was something egregious, yes.

21 Q. So, if it were egregious, if the Brig OIC was chaining
22 somebody up naked to a radiator, you would believe you have the
23 authority to order him to remove that?

1 A. Yes.

2 Q. So in this instance, because it was not egregious in your
3 mind, you did have the authority?

4 A. I did not act upon that.

5 Q. So you had the authority?

6 A. Yes.

7 Q. All right. So, do you know if the conditions for PFC
8 Manning were ever changed during his remainder of time, from March
9 3rd or March 2nd, to April 20th when he left Quantico?

10 A. No.

11 Q. No, meaning you do not know, or no, his conditions were not
12 changed?

13 A. His conditions were not changed.

14 Q. Now, on the morning of 3 March 2011, PFC Manning was
15 standing naked outside of the cell for morning count, did you know
16 that?

17 A. Yes.

18 Q. And, what was your understanding of the situation?

19 A. The description to me was the fact that he was given either
20 blankets or smock to cover himself and he chose not to.

21 Q. Who told you that?

22 A. Colonel Oltman.

1 Q. Okay, so Colonel Oltman told you that he was given stuff
2 and he chose not to cover himself and that is why he was standing
3 naked?

4 A. On that one particular day, yes.

5 Q. All right. Walk me through this then, okay, we will assume
6 that that is true. Why in the world would a Brig allow somebody to
7 stand naked then for morning count?

8 A. They were inside the cell. They have morning roll call in
9 the morning. And, he had the appropriate clothing or blankets to be
10 able to cover himself and my understanding is that he chose not to
11 that morning.

12 Q. Well, we do not live in a democracy in an installation nor
13 do we live in a democracy necessarily when it comes to military
14 command and control.

15 TC[MAJ FEIN]: Your Honor, objection.

16 MJ: Finish the question.

17 CDC[MR. COOMBS]: If I could complete my question.

18 MJ: Finish the question.

19 CDC[MR. COOMBS]: Thank you.

20 Q. So, if PFC Manning was standing naked in his cell, why
21 wouldn't the -- and it wasn't at the direction of the Brig, why
22 wouldn't they step in and correct that immediately?

1 MJ: Mr. Coombs, I am -- how this is -- this witness is pure
2 speculation at this point, he was not there.

3 CDC[MR. COOMBS]: This witness, ma'am, is the witness that the
4 138 complaint was made to about this very incident. This witness had
5 both Chief Galaviz, his you know, the person from PPO investigate but
6 also his Deputy IG look into it. This witness is fully informed.

7 MJ: All right. I will allow you a little latitude, go ahead.

8 Q. So, again, why wouldn't a Brig DBS say ----

9 TC[MAJ FEIN]: Your Honor, objection. That fact is not -- the
10 inspections that occurred happened before this incident. There was
11 two Article 138 complaints. And, everything that Mr. Coombs just
12 told the court happened before the incident of this questioning of
13 someone who does not even have direct knowledge.

14 MJ: Let us see what the answer is, go ahead.

15 Q. Why wouldn't the DBS, when an inmate -- or a detainee ----

16 MJ: What is a DBS?

17 CDC[MR. COOMBS]: Sorry, ma'am.

18 WIT: Duty Brig Supervisor.

19 CDC[MR. COOMBS]: Duty Brig Supervisor, the individual
20 responsible in lieu of the commander being present.

21 Q. Why wouldn't a DBS, at that point, immediately correct the
22 situation?

1 A. Again, I can only speculate. I am sure he has other duties
2 in regards to looking at and checking on the other detainees. That
3 this is just one individual within. Correcting it immediately on the
4 spot would have detracted him from his other duties that he had
5 within the Brig and it was not anything that was causing immediate
6 harm to PFC Manning. He had not done this on any other occasion and
7 he hadn't done it any other time after that that I am aware. So, in
8 regards to why he did not correct it right on the spot, I can only
9 speculate, but I can tell you he probably had other duties and
10 responsibilities and that this was something that PFC Manning chose
11 to do and was something that did not have to be immediately attended
12 to.

13 Q. All right, so you believed he chose to do this based upon
14 what you were told by Colonel Oltman?

15 A. Colonel Oltman, from Chief Warrant Officer Barnes and from
16 the staff, it was relayed to her.

17 Q. Did the staff, Chief Barnes or Colonel Oltman inform you of
18 whether or not PFC Manning had clothing at that time?

19 A. Yes.

20 Q. And, what did they tell you?

21 A. That they had -- he had articles to be able to cover
22 himself, a blanket and a smock.

1 Q. Okay, so what he had, you believe, was a blanket and a
2 smock at that point?

3 A. Yes.

4 Q. Do you know that the smock was not given to him until 7
5 March, five days after this?

6 A. It very well could be, I could be mistaken.

7 Q. All right, let us talk about some other things then maybe
8 you might be mistaken on. Did you know that he had no clothing given
9 to him at that point?

10 A. At that point, what time are we talking -- timeframe are we
11 talking about?

12 Q. At the point that he is standing naked in front of his
13 cell?

14 A. Yes, for 10 minutes.

15 Q. All right, and for that 10 minutes, did you know that he
16 initially grabbed his blanket but was told, "Put the blanket down"?

17 A. No.

18 Q. You did not know that?

19 A. No.

20 Q. And, if he is told, "Put the blanket down", and he has no
21 clothes, what choice does he have?

22 A. You are talking hypothetical.

1 Q. No, I am talking, were you informed that he was told to put
2 the blanket back?

3 A. No, I was not.

4 Q. And, if he has no clothes, can't put the blanket, his
5 choice is to, what?

6 A. And, again, you are asking me to comment on something that
7 I do not know and you do not know to be true. Because, he had the
8 opportunity on other occasions to cover himself and he chose not to
9 this time.

10 Q. And how do you know that to be true?

11 A. Because there were no other reports of him standing naked
12 other than that day

13 Q. All right, and that was because, what; do you know?

14 A. No.

15 Q. He was given his clothes. So, again, what you have, if he
16 doesn't and he is told to put his blanket away, what choice does he
17 have but to stand naked?

18 MJ: Mr. Coombs, the witness has advised you that that was not
19 what he was told, so you are asking him to draw a conclusion on
20 something the witness has said he was not aware of. So please move
21 on.

1 CDC[MR. COOMBS]: All right. Well, again, Your Honor, what I
2 am trying to convey here is here saying that he is told -- he is not
3 there, so he doesn't know. He is told certain facts.

4 MJ: Yes.

5 CDC[MR. COOMBS]: All right. And then I am asking him if he
6 is aware of other facts, he said no.

7 MJ: Yes, and then you are assuming them to be true, so ----

8 CDC[MR. COOMBS]: Correct. And that I am asking him ----

9 MJ: Let us move on.

10 CDC[MR. COOMBS]: ---- what choice he would have.

11 MJ: Let us move on. The witness has advised -- has answered
12 that that is not the facts that he is aware of. So, please move on.

13 Q. All right. Well, on that vein, then, would you agree with
14 me that if he is told to stand naked outside of his cell, that that
15 would be wrong?

16 A. If he was told to stand naked, yes.

17 Q. Okay, and why would that be wrong?

18 A. It serves no purpose.

19 Q. Exactly. Now, was the decision to remove PFC Manning's
20 underwear at night eventually briefed up to you?

21 A. Yes.

22 Q. And, how so?

23 A. Through Colonel Oltman.

1 Q. And what did he tell you?

2 A. That, based upon comments that were made to Master Sergeant
3 Papakie that were relayed up through Gunny Blenis and Chief Warrant
4 Officer Barnes that she had taken the statement seriously and acted
5 within her authority.

6 Q. And did you concur with the decision to remove PFC
7 Manning's underwear at night?

8 A. There was no concurrence. I was briefed and I did not do
9 anything to change it.

10 Q. All right, so I guess you did not inform them then that you
11 did not concur with that?

12 A. That's correct.

13 Q. Now, was General Flynn, at this point now, based upon him
14 saying that it would be nice not to read this in the Early Bird, was
15 he briefed on the decision to continue to remove PFC Manning's
16 underwear?

17 A. Yes.

18 Q. And, how was he briefed?

19 A. I don't recall.

20 Q. Do you recall if General Flynn indicated that he non-
21 concurred with?

22 A. No.

1 Q. So, by not concurring, by I guess, not non-concurring then
2 he made no opinion on that issue?

3 A. I do not recall an opinion from him.

4 Q. All right. Do you recall if he said anything back to you
5 once he was briefed?

6 A. I don't recall.

7 Q. Do you recall why you were briefing him?

8 A. No, no at this point.

9 Q. And that is because it has been so long, right?

10 A. I just do not recall.

11 [The court reporter marked Appellate Exhibit 418Q.]

12 Q. All right, let's talk about another email on the subject.
13 I am handing the witness what has been marked as Appellate Exhibit
14 418Q. Go ahead and take a moment to glance at that.

15 TC[MAJ FEIN]: Your Honor, objection. Again, this is an email
16 that Colonel Choike is not even on; he would have never been privy to
17 until today.

18 MJ: Let me look at it first. Hold on. I have your objection,
19 let's hear the line of questioning and I will decide. Go ahead.

20 CDC[MR. COOMBS]: Thank you, Your Honor.

21 [END OF PAGE]

22
23

1 Questions continued by the civilian defense counsel [MR. COOMBS]:

2 Q. Are you aware that Lieutenant Colonel Wright sent an email
3 to Colonel Oltman about Chief Barnes' decision to remove PFC
4 Manning's underwear at night?

5 A. Not until now.

6 Q. So, Colonel Oltman never told you about that?

7 A. I don't recall, no.

8 Q. So he never told you that Colonel Wright stated, "I wanted
9 to pass on to you a professional opinion from PSL." And, what does
10 PSL stand for?

11 A. It is physical security, the law enforcement branch, so we
12 had the oversight of Chief Warrant Officer Galaviz. Yeah, Colonel
13 Oltman did speak to me, now that I am looking at this, yes.

14 Q. All right, so let us talk about it. So, he says, "I wanted
15 to pass on to you a professional opinion from PSL that we have some
16 concerns about recent within the last 2 to 3 days, decisions made by
17 the Commanding Officer of the Quantico Brig to take measures that are
18 consistent with suicide watch but not officially place that person in
19 suicide watch status is inconsistent with the way we are supposed to
20 do business. We understand that there may be some concern about
21 taking actions which might result in another 138 complaint, but if we
22 are doing business the way we are supposed to, there is nothing to

1 worry about." Now, you said Colonel Oltman shared this fact with
2 you?

3 A. We discussed it, that he received it.

4 Q. And did Colonel Oltman also discuss with you the fact that
5 Lieutenant Colonel Wright did not believe it was proper to remove PFC
6 Manning's underwear at night and not place him on suicide risk?

7 A. Yes, yes.

8 Q. And, were you aware that Colonel Oltman asked Chief Barnes
9 then to synopsize for him the rationale behind her decision or her
10 authority to do that?

11 A. No.

12 Q. He never briefed you on that?

13 A. Not that he asked her to write this email, no.

14 Q. Did he ever back brief you on, I guess when you found out
15 Colonel Wright, who -- again, Colonel Wright is one of the main
16 subject matter experts in Marine Corps Corrections, correct?

17 A. Yes.

18 Q. And, he's saying, "Hey, look, I do not think this is the
19 way we should be doing business." Colonel Oltman never briefed you
20 on what Barnes' reply was?

21 A. He never forwarded it to me but he we did discuss it, the
22 fact that he had a conversation with her and felt that she was within
23 her authority to do so.

1 Q. And, did he tell you that she told him that it was hard to
2 justify assigning him to suicide status, so it was easier to explain
3 why we left him in POI and removed underwear as opposed to placing
4 him on suicide risk without adhering to the guidance of the SECNAV?

5 A. No, that is the first time I am seeing and hearing this.

6 Q. Does that sound like a proper basis to you?

7 A. No.

8 Q. I am retrieving 418Q from the witness. Now, on 10 March
9 2011, Colonel Oltman sent you an email where he stated that his XO,
10 Major E-E-B-I-T-T-S; is that how you say her name?

11 A. E-B-B-E-T-T-S.

12 Q. Major Ebitz was just informed that any changes in PFC
13 Manning's status must be approved by you. Do you recall that?

14 A. Yes.

15 Q. And, I want you to have the benefit of the emails in front
16 of you so I'm just going to mark these.

17 [The court reporter marked Appellate Exhibit 418R.]

18 Q. I am handing the witness what has been marked Appellate
19 Exhibit 418R. If you go to the second page, you see that is Colonel
20 Oltman's response -- or, initial email to you, correct?

21 A. Yes.

22 Q. And then the first page is your response to him?

23 A. Yes.

1 Q. And, on Colonel Oltman's email to you, he indicated that he
2 was upset with the assumption that CW2 Barnes was acting alone and
3 unafraid in her decision process with regards to the status of PFC
4 Manning, correct?

5 A. Yes.

6 Q. He told you that every decision by CW2 Barnes and her
7 predecessor, Chief Averhart was discussed with him?

8 A. Yes.

9 Q. He also told her that he concurred with every decision made
10 by Chief Barnes and Chief Averhart?

11 A. Yes.

12 Q. In fact, he states that he was not sure how much more
13 involved the command could be, given the fact that he is involved in
14 every change and then every change then is discussed with you?

15 A. Yes.

16 Q. He says, with the "boss", and the boss means you. Is that
17 correct?

18 A. Yes.

19 Q. And, you told Colonel Oltman that the instructions that
20 were given to you from General Flynn were best passed on personally
21 to CW2 Barnes?

22 A. Yes.

23 Q. Do see that in your email?

1 A. Yes.

2 Q. And, these instructions, again, were given from Lieutenant
3 General Flynn?

4 A. Yes.

5 Q. And, you stated that your instructions were based upon two
6 lengthy meetings with Lieutenant General Flynn?

7 A. Yes.

8 Q. And you told Colonel Oltman that any decisions to change
9 the handling instructions or assignments or assignment status needed
10 to be briefed first before executed?

11 A. Yes.

12 Q. You also told Colonel Oltman that you, and I will quote you
13 here, "You and I supporting/concurring with the Brig OIC's decisions
14 that change handling instructions or assignment status without
15 passing that info to CG MCCDEC", and CG MCCDEC is Lieutenant General
16 Flynn, right?

17 A. Yes.

18 Q. "For consideration is no longer acceptable," is that
19 correct?

20 A. Did not say -- you put in the word, "consideration".

21 Q. Excuse me?

22 A. You said for his consideration.

1 Q. "For consideration is no longer acceptable," do you see
2 that?

3 A. Yes.

4 Q. Now, did Chief Barnes understand that the General Flynn
5 would have to be briefed prior to any change in the handling
6 instructions or assignment status?

7 A. I am sorry, say that again?

8 Q. Did CW2 Barnes understand that Lieutenant General Flynn
9 would have to be briefed prior to any change in the handling
10 instructions or assignment status of PFC Manning?

11 A. She knew that that was not the case because I personally
12 called her. And, that personal phone call directly down to her, that
13 resulted in this email from Colonel Oltman to me, had to do with the
14 fact that he felt that I was calling directly to the Brig OIC and did
15 not go to him. And, that that phone call that I called and
16 specifically talked to her about had to do with the events that were
17 in the media in which the General read in the blue -- you know, the
18 Early Bird the incident at the Brig prior to being briefed. His
19 conversations with me at that time was to ensure that any changes
20 that were taking place, he was at least being notified, so that he
21 could properly deal with it. And, that of course is summarized in
22 the tail end of this email.

1 Q. All right, let's -- Maybe you did not hear my question
2 correctly so I will ask again. And, maybe -- I mean, you told Oltman
3 that, "You and I supporting/concurring with the Brig OIC's decisions
4 that change handling instructions or assignment status without
5 passing that info to CG MCCDEC for consideration is no longer
6 acceptable"?

7 A. Yes. And, can you ----

8 Q. All right, so then my question is, did Chief Barnes
9 understand that prior to changing any handling instructions or
10 assignment status, it had to be passed up to Lieutenant General Flynn
11 for consideration?

12 A. The word, "consideration", I wrote it but that is not what
13 I meant in the final paragraph. And Chief Warrant Officer Barnes
14 received a phone call from me that it wasn't for General Flynn to
15 consider as much as it was for him to be notified.

16 Q. Okay. So, if I am correct then, I have to read this
17 saying, "You and I supporting/concurring with the Brig OIC's decision
18 that change handling instructions or assignment status without
19 passing that information to CG MCCDEC, for his knowledge is no longer
20 ----

21 A. Yes.

22 Q. So why would you supporting/concurring with the Brig's
23 decisions have to be briefed to CG MCCDEC?

1 A. That has been -- because that is been -- that had been the
2 process -- or had not been the process, up to this particular point
3 in time in which he saw a change in handling instructions and read
4 about it for the first time in the news.

5 Q. So your testimony today understand is that CG MCCDEC did
6 not have to make any consideration of it, he just wanted to be known
7 [sic] about it?

8 A. That is correct.

9 Q. That is it?

10 A. That is correct.

11 Q. And that is why you had to personally pass that on to Chief
12 Barnes?

13 A. Yes.

14 Q. Really? Okay, let us look down more at that email then.
15 You tell Colonel Oltman that you and Colonel Oltman would not get
16 anything in writing from Lieutenant General Flynn if he rejected or
17 modified a recommendation?

18 A. Yes.

19 Q. Did you accidentally put, "recommendation", there to?

20 A. Yes -- no, I wrote that.

21 Q. But, I mean, you didn't mean, "Recommendation", you meant,
22 "Consideration"?

23 A. Yes.

1 Q. So, why would you get anything in writing from Lieutenant
2 General Flynn for consideration?

3 A. Colonel Oltman had mentioned that. And, I am only
4 responding to what he wrote.

5 Q. But, I mean, if you were only responding to what he wrote,
6 you would say, "Hey, Colonel Oltman, you got it all wrong. CG
7 doesn't want to do anything in writing or consideration, he just
8 wants to be told about this stuff?"

9 A. That is correct, and that is what the summary paragraph
10 says.

11 Q. That is not what it says. It says here that you would not
12 get that in writing because Lieutenant General Flynn, in this
13 situation, would not put anything in writing the rejected or modified
14 recommendation." That is what you wrote.

15 A. That is what I wrote. But, the summary paragraph gives the
16 real intent of what I meant.

17 Q. So, the real intent of what you meant is not expressed in
18 that -- the words I just read to you?

19 A. That's correct.

20 Q. And, that is what you want us to believe?

21 A. That is correct. That General Flynn asked to be notified.
22 General Flynn was not in the decision-making chain in terms of what
23 the actual classification and handling instructions were in the Brig.

1 Q. All right, then you have to explain to me why you are going
2 to sit down and talk to him about documenting any non-concurrence.
3 What is all that about?

4 A. So, he could be notified. General Flynn never once
5 influenced anybody.

6 Q. Not my question. Why do you write in there ----

7 A. But, it is relevant to the point you are trying to make.
8 The point you are trying to make is, is does General Flynn influence
9 the classification and assignment in the Brig. And the answer is,
10 "no."

11 Q. No, my question is, why did you write in there that you and
12 I are going to sit down and talk about the way forward if CG MCCDEC
13 rejects or modifies the recommendation?

14 A. I said that he would not put anything in writing because he
15 was not going to make those decisions. He was not going to place
16 himself to do that.

17 Q. Okay. And why -- take me down this logic then. Why would
18 he not place himself in the position to do this?

19 A. Because, he had trust and confidence in the people at the
20 Brig who were there 24/7 to do their job, the same as I did.

21 Q. All right, so why would you then say, "We are not going to
22 get anything in writing"?

1 A. Because, he was not going to place himself in to make those
2 decisions. We're talking about a three-star general.

3 Q. I know we are.

4 A. And, we are not talking about him putting himself as the
5 Brig OIC when he has got a complete chain of command to make the
6 appropriate assessments.

7 Q. All right, so explain to me why, then, you write in there,
8 "I had to pass these instructions on personally to her that any
9 decision changing his handling instructions had to be briefed prior
10 to executed." And, "That we are not going to get anything from him
11 in writing if he rejects or modifies and we will talk about the way
12 forward if he chooses to do that." How does that at all, marry up
13 with what you are now saying that he just wanted to be notified?

14 A. The very fact that he was not happy that he got notified
15 from the press first.

16 Q. Okay, so you interpret this email -- let us go through this
17 line by line and you can interpret this email for me, what you meant.
18 I know what you wrote ----

19 A. Well, you have to go back to the timeline in terms of what
20 is outside of that email to have an understanding of what that means.

21 Q. So we can't look at the words that you wrote.

22 A. You can look at the words and then you can also take into
23 account that on 2 March is when Chief Warrant Officer Barnes made the

1 decision to remove his underwear. The general had read about it in
2 the newspaper as the first time that he was notified about that. And
3 what he wanted to know was why he was not briefed in that particular
4 regard.

5 Q. All right, define this to me that, and then you tell me if
6 I am reading this right. "Recommendations forwarded to me for
7 discussion and concurrence".

8 A. Yes.

9 Q. Concurrence is a word that means you're in agreement or
10 not, right?

11 A. Yes.

12 Q. And then, "Recommendation forwarded to CG MCCDEC," that is
13 Lieutenant General Flynn?

14 A. Yes.

15 Q. "Before implementation"?

16 A. Yes.

17 Q. Now, on this here what did you expect the process to mean?

18 A. "And blindly forward a recommendation to CG instead of
19 discussing with you and I ----

20 Q. Yeah, you can read the rest to me, go right ahead.

21 A. "Will not blindly forward a recommendation to the CG.
22 Instead, I will discuss it with you so that we will know exactly what
23 I will forward on to him".

1 Q. Okay. But, so, how do you interpret number two?

2 A. All of that is information pushed to the Commanding

3 General.

4 Q. For him not to do anything with and then just be known?

5 A. That is correct.

6 Q. Know about it, that is it?

7 A. That's correct.

8 Q. So, interpret number three for me; can you read that?

9 A. "Non-concurrence in writing. We need to discuss and

10 determine the best way to document the decision, final actions, for

11 the record. CG wants to be able to determine the political impact,

12 media interest, legal ramifications and the senior leadership

13 reactions and we can't do so without him being in the loop up front."

14 Q. Okay, and how is that interpreted?

15 A. Strictly informing the general what the decisions were

16 being made by Chief Warrant Officer Barnes and being briefed up

17 through to Colonel Oltman and myself.

18 Q. Okay, so, "The CG wants to be able to determine the

19 political impact, media interest, legal ramifications and senior

20 leadership reactions." What did he want to do with all of that?

21 A. He did not want to be in -- he did not want to be in the

22 react mode.

1 Q. All right. So, what was the political impact that he was
2 concerned about; do you know?

3 A. Those are just comments that I made in regards to the media
4 interest and interest that came down from Congress from the UN.

5 Q. Okay. So, you are telling Colonel Oltman the political
6 impact is the media interest and ----

7 A. Congressional interest, UN interest.

8 Q. And, what does the media interest part mean?

9 A. The media interest is how it is going to be covered in the
10 news. It goes directly back to what took place on 2 March.

11 Q. What are the legal ramifications?

12 A. Legal ramifications -- you know, I can't recall what or why
13 I would put that in writing at this point.

14 Q. How about senior leadership reactions?

15 A. From the Commandant on down.

16 Q. And, what does that mean?

17 A. Just their involvement. General Flynn, you have seen and
18 introduced past correspondence where senior leaders were engaged and
19 involved. And, that is all General Flynn wanted. He wanted to be
20 able to be in the loop of information in case there were any issues
21 in those categories.

22 Q. Okay. So, if I am understanding everything, and I will
23 read -- tell me if I am reading this correctly. I am again showing

1 you what has been marked 418R. This is Colonel Oltman to you. He is
2 saying, for number two, "Based on conditions, etc., we, Security
3 Battalion, will make a recommendation request to implement the
4 change. Should there be a non-concurrence and different guides
5 given, we would like to have it in writing in order to annotate the
6 file and set up whatever paperwork is required." What did you
7 interpret Colonel Oltman to mean by that?

8 A. Frustration. He felt that me calling directly down to
9 Chief Warrant Officer Barnes, that the chain of command was being --
10 was cut. And I had to convey him that it was not and that no one was
11 trying to second-guess or to try and take away the authority of the
12 Brig OIC.

13 Q. So why didn't you just say to him, "Hey, Colonel Oltman,
14 you got it all wrong. The CG does not want to make any changes or
15 recommendations or anything like that. All the CG wants to do is
16 just be informed and, guess what, I am not going to make any changes
17 or recommendations either. So, you don't have to worry about that at
18 all." Wouldn't that be an easier thing to say that what you said
19 here?

20 A. It would be. That was my intent to be able to portray that
21 to him. Because, it says clearly in point number one that the chain
22 of command is important.

1 Q. Okay. It also says, "You and I doing anything without
2 concurrence from the CG is not going to happen anymore." Correct?

3 A. That's correct. That is what is written.

4 [The court reporter marked Appellate Exhibit 418S.]

5 Q. All right. Let's talk about another email. I am handing
6 the witness what has been marked as Appellate Exhibit 418S. Now this
7 is a 14 March 2011 email. And, on 14 March 2011, do you recall
8 having a meeting at the Quantico Brig to discuss obtaining a
9 dedicated mental health support at the Brig?

10 A. Yes.

11 Q. And you apparently wanted a full-time president -- presence
12 at the Brig, correct?

13 A. Yes.

14 Q. And why did you a full-time presence of the Brig?

15 A. Because of the length of time that PFC Manning was being
16 detained that I felt it was important that someone was there as a
17 part of the staff.

18 Q. That was a -- somebody that was a mental health provider,
19 full-time?

20 A. Yes.

21 Q. And what did you expect the full-time mental health
22 provider to do?

1 A. To be able to provide service to PFC Manning and at the
2 same time work closely with the Brig staff.

3 Q. And, how did -- I guess, why were you looking to get a
4 full-time mental health provider?

5 A. As time has gone by and the length of time, it was not
6 clear exactly how long that we were going to be detaining PFC
7 Manning. And, that there had been a lot of discussions and staff
8 meetings that we had in regards to the Brig, in and of itself, going
9 from a level I post-trial confinement facility to a pretrial
10 confinement facility. That process was underway and it was not yet
11 complete when we received PFC Manning. So, the discussion was in
12 regards to the TO -- the Table of Organization for the Brig, which
13 included medical support staff was still not clear exactly what the
14 requirements were. In Quantico, the Naval Health Clinic is just
15 that, it is not within the chain of command. I don't own it. He did
16 not -- it was only by luck that Doctor Hocter was there as a forensic
17 psychiatrist. He had other responsibilities and duties, but that was
18 not dedicated very specifically the Brig. And, so when you look at
19 the pretrial confinement facility being reduced to pretrial
20 confinement, that it was really envisioned as short-term in nature
21 and not a long-term detainee. So, the length of the detainment
22 required, in my mind, the need for someone to be the dedicated there
23 as a part of the staff.

1 Q. Okay, and you wanted somebody full-time. Why did you want
2 somebody full-time?

3 A. For the reasons I have just explained.

4 Q. Present in the Brig full-time as opposed to what you
5 receiving from Captain Hocter?

6 A. Yes.

7 Q. And later Colonel Malone?

8 A. Yes.

9 Q. And that was just for PFC Manning or was that for somebody
10 else?

11 A. No, that was for the Brig overall.

12 Q. Did anyone ever say to you that they wanted full-time
13 presence because they thought PFC Manning was behaving differently
14 with the Brig psychiatrist as opposed to the Brig staff?

15 A. No.

16 Q. So, that was never a calculation in your mind?

17 A. No.

18 Q. Let's talk about the Brig psychiatrist that he did have.
19 You had both Captain Hocter and Colonel Malone, correct?

20 A. Yes.

21 Q. Did you trust the expert medical opinions of Captain
22 Hocter?

23 A. Yes.

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized.

Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 490.
2. Judge advocate's review pursuant to Article 64(a), if any.
3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.
4. Briefs of counsel submitted after trial, if any (Article 38(c)).
5. DD Form 494, "Court-Martial Data Sheet."
6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.
7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

14. Records of former trials.

15. Record of trial in the following order:

- a. Errata sheet, if any.
- b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.
- c. Record of proceedings in court, including Article 39(a) sessions, if any.
- d. Authentication sheet, followed by certificate of correction, if any.
- e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
- f. Exhibits admitted in evidence.
- g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
- h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.